United States Court of Appeals for the Second Circuit



APPENDIX

74-1860_B

United States Court of Appeals

FOR THE SECOND CIRCUIT Docket Nos. 74-1869, 74-1869

P/5

UNITED STATES OF AMERICA,

Appellee,

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GEORGE STOFSKY, CHARLES HOFF, AL GOLD and CLIFFORD LAGEOLES,

Defendants-Appellants.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

> JOINT APPENDIX (Volume II—pages 429a-808a

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(1359) * * *

Redirect Examination by Mr. Abramowitz:

- Q. On that day, March 9, 1972, you appeared in the grand jury, Mr. Stofsky, were you asked a series of questions about a particular incident in January, 1972? A. Yes.
- Q. Tell us generally what that incident was in January of 1972 against contractors.

Mr. Sabetta: I object to that. The Court: Sustained.

- Q. Well, you testified on cross-examination that the union periodically makes general drives against contracting; is that correct? A. Yes.
- Q. What is a general drive against contracting; (1360) what does that consist of? A. It could be a variety of things. It could include strikes, union committees checking shops, things of that sort, going up to contracting shops to see if we could recruit them out of the contracting shops, the workers that is.
- Q. You testified that the union has done that periodically over the last 50 years but not on any regular basis. A. That's correct.
- Q. When do these drives take place? A. They almost always will take place preceding the negotiations for an agreement.
- Q. Now, were you negotiating an agreement in January of 1972? A. Yes, we were.
- Q. Was there in fact a general drive against contractors in January of 1972? A. Yes, there was.
- Q. During the period that there are not general drives against contractors, what other specific actions does the union take during the course of any year with respect to the contractors themselves? A. Mostly it's just a watching

kind of activity, (1361) trying to observe where someone may be taking work out, things of that sort.

Q. By the way, did Mr. Glasser's name come up in the grand jury appearance of yours on March 9, 1972? A. It did not. (Pause)

Mr. Abramowitz: Could I have the last question and answer read?

(Record read.)

- Q. In fact, how long was your appearance before the grand jury on that day, if you remember? A. I think almost an hour.
- Q. Isn't it a fact that in the entire appearance, the only question that was asked of you concerning payoffs, on page 37, line 15, was this question and this answer:
- "Q. Did you ever hear of any payoffs being made for manufacturers to representatives of the union? A. No, I haven't." Do you remember being asked that question and giving that answer? A. Yes, I do.
- Q. Was that the only question concerning payoffs or alleged payoffs that you were asked? A. Yes, it was. (1362)
- Q. Do you remember you testified yesterday, Mr. Stofsky, about certain allegations about Mr. Jaffe; do you recall that? A. Yes, I do.
- Q. Would you tell us why you did not tell the grand jury in response to the question that I just read about Mr. Jaffee?

Mr. Sabetta: I object to that.

The Court: Just a minute. Sustained.

Q. Isn't it a fact that you had no proof and evidence that Mr. Jaffee was in fact taking money? A. That is a fact.

Q. Now, Mr. Sabetta asked you several questions about your recollection of contracting complaints during the period 1967 to 1970 about several firms, the names of whom came up at this trial; do you recall that? A. I do.

Q. And he asked you whether you were surprised to hear that some of them did not have any contracting complaints, although with respect to Mr. Sherman I believe you testified he had one in January, '68, and one in August of 1970; is that correct? A. I believe it is.

Q. And Mr. Schwartzbaum had a strike, I believe (1363) you testified, in May of 1969? A. '69.

Q. I show you Defendants' Exhibit A for identification and ask you to identify that document. A. This is a—shall I read it?

Q. No. Can you identify it? A. Yes. It's a list of firms that are under collective bargaining agreements with our union.

Q. I think you testified yesterday that there are about 600 of those firms; is that correct? A. Yes.

Q. Would you be surprised, Mr. Stofsky, if anyone stood here and told you that there were no contracting complaints for any one of these firms during the period 1967 to 1972?

Mr. Sabetta: I object to that, your Honor.

Mr. Abramowitz: Your Honor, I think it's perfectly proper redirect.

The Court: I will allow it.

Q. Please answer. A. Would you-

Mr. Abramowitz: Mr. Reporter, please read the question. (Question read.)

(1364) A. No, I was not.

Q. Now, you testified on cross-examination concerning Mr. Grossman. Do you recall that? A. Yes.

Q. Putting your mind back to the period between 1967 and before Mr. Grossman went into the conglomerate at Richton which was in 1971 or '72, before that did you know how many corporations Mr. Grossman had? A. I had—no, I had no direct knowledge.

Q. You heard him testify here, did you not, that one of his corporations he maintained as a non-union shop; is that correct? A. Yes.

Q. I believe Harry and Dan Grossman Corporation? A. I think that was the one he identified.

Q. Do you remember that he testified that only H & D Grossman Corp. was the union shop; is that correct? A. Yes.

Q. Do you have—excuse me, not you. Does the union have a right to insist on looking at the books of non-union companies? A. No, and we are probably not even aware of their existence.

Q. Does the union have a right to walk in to any (1365) contractor and say, "Let me see your books"? A. Not at all.

Q. Does the union have a right to walk in to any contractor's shop and say, "Let me see your skins"? A. No.

Q. "Let me see your garments"? A. No.

Q. You don't have an agreement with the contractors; is that right? A. We have absolutely no legal right to be there unless they let us, actually.

(1366)

Q. Now, did there come a time in 1973 when pursuant to a court order you were permitted to look at all of Mr. Grossman's books? A. Yes, for the first time.

Q. Did that precede the fine of \$10,000 that was testified to? A. That is correct.

George Stofsky-for Defendants-Recross

Recross-examination by Mr. Sabetta:

Q. You said the union had no legal right to enter a contractor's shop? A. That is right.

Q. But you know that the union does do it, anyway? A. Some shops where they are allowed.

Q. You testified earlier that it is done from time to time? Isn't that right? A. Yes, I did.

Q. That the business agents are instructed to visit every shop in the buildings to which they are assigned? A. That is right, if they are allowed in.

(1367)

Q. So that if a business agent is allowed in he certainly could have access to the skins in that shop? A. Of course not.

Q. Of course not? A. Of course not.

Q. What does he do? Just stand at the door? A. He could not have access to the skins. They are just laying around anywhere.

Q. When he would enter the shop what would he do? Simply stand in the doorway? A. No. He would probably attempt to speak, if there are workers there, to the workers, especially if he were one of our Greek-speaking business agents, and he would also probably speak to the employer in that kind of a situation and try to get some information out of him, if he could, like, "Who are you doing the work for?" That kind of thing. They wouldn't let you go and examine their skins, let alone their books.

Q. In order to talk to the employers, what would the business agent do? Wouldn't he have to walk through the factory to talk to them? A. Sure.

Q. Is it your testimony that the collective labor agreement does not bind a union manufacturer who is a (1368) party to it if that manufacturer also runs a non-union shop? A. No, that is not my testimony.

Q. Let me rephrase it. It didn't come out the way I

wanted it to. Is it your testimony that the collective bargaining agreement would not bind the non-union entity of a union manufacturer's operation? A. My testimony is that we would have to be aware of it and the firm would have to make its books available to us for us to even know that this exists.

Q. There is no doubt in your mind that if a union manufacturer also had some sort of non-union corporation, that corporation would be as much a party to this agreement as would the union corporation? Isn't that right? A. If we had access to the books that would show it, yes, but they don't show us that.

Q. As a matter of law pursuant to the contract a nonunion entity owned by a union manufacturer is as much a part of this agreement as is his union corporation? A. As a matter of law I don't know, Mr. Sabetta. I'm not a lawyer.

Q. Are you familiar with the provisions of this contract? (1369) A. Yes.

Q. Isn't one of the provisions of this contract that a union manufacturer who has a non-union shop is as much a party with respect to his non-union entity as he is with respect to his union corporation? A. I don't think so.

Redirect Examination by Mr. Abramowitz:

Q. Did Mr. Grossman ever show you the books '67 to '71 of the so-called non-union operation, Harry and Dan Grossman, Inc.? A. Never.

Q. Did he ever show you the books of Harry and Dan Grossman, Inc.? A. Never.

George Stofsky—for Defendants—Recross Irvin Hecht—for Defendants—Direct

Recross-examination by Mr. Sabetta.

Q. Did you ever ask personally to see any books? A. Personally? No.

(1371)

IRVIN HECHT, called as a witness by the defendants, being first duly sworn, testified as follows:

Direct Examination by Mr. Rooney.

- Q. What position do you hold in your employment? A. I am the executive vice-president of the Associated Fur Manufacturers, Inc.
- Q. In 1970 you were the executive vice-president? A. No, sir.
 (1372)
- Q. What position did you hold then? A. I was the manager of the labor department of Associated Fur Manufacturers.
- Q. Was there a man by the name of Greenberg who worked in the same location at that time? A. Yes, sir.
- Q. What was Mr. Greenberg's job? A. He was the executive vice-president of the Associated Fur Manufacturers.
- Q. Mr. Hecht, toward the end of the summer of '70 did you have a conversation with Jack Glasser?' A. I did.
- Q. Who was present? A. Mr. Greenberg and myself and Mrs. Glasser.
- Q. Will you describe that conversation, please? A. Yes. Mr. Greenberg and I visited the home of Jack Glasser. He was recuperating from an illness. And we visited him for the direct purpose of trying to ascertain whether or not Jack

Irvin Hecht-for Defendants-Direct

Glasser received moneys from various manufacturers. And Mr. Glasser denied such receiving of moneys. And Mr. Greenberg questioned him whether he did receive such money and whether he gave such moneys to any union officials. And Mr. Glasser denied that most (1373) emphatically.

And during the course of the conversation Mr. Greenberg stated to Glasser that "You realize that your pension is in jeopardy," and Mr. Greenberg was talking about an office pension that was in effect at that time. And Glasser said, "I'm telling you the truth, that I received no money nor

did I give money to anybody else at the union."

Q. There were two pensions, an office pension and an in-

dustry pension? A. That is right.

Q. Now, did you shortly thereafter speak to Mr. Glasser again? A. I will say about a week or a week and a half later Mr. Glaser recuperated from his illness, came up to the office at nine o'clock as though he were reporting for work, and he was called in to Mr. Greenberg's office, and I was present.

Mr. Greenberg again questioned Mr. Glasser as to the acceptance of money and the giving of money, and Glasser emphatically denied that, and Greenberg again repeated, as he did in the previous meeting, that "Your pension is in jeopardy and I will withhold your pension unless you tell me that you took money and you gave money (1374) to union officials." Glasser thereupon to the best of my recollection said, "You're trying to bribe me."

The Court: Just a moment. All right.

A. (Continuing) Glasser said, "You're trying to bribe me; you're offering me \$15,000 to make a statement that I took money and I gave money to the union officials. I told you previously I did not do any of those things, and I'm going down to tell the union of this bribe offer that you made me."

Irvin Hecht-for Defendants-Direct

Q. Did he mention the statement being a false statement? A. He did.

Mr. Sabetta: Your Honor, he's trying to put words in his mouth.

The Court: The objection to leading is sustained.

- Q. Did Mr. Glasser describe the word "statement" at all? A. I don't understand your question.
- Q. You mentioned Mr. Glasser used the word "statement" in this conversation that he had with you and Mr. Greenberg. Do you recall that just a second ago? (1375) A. Mr. Glasser denied that he accepted or gave money to anybody. He then said, "You're offering me a bribe of \$15,000 to make a statement, which I previously denied—this is Glasser speaking—that I previously denied, to the effect that I took money and gave money to union officials.

- Q. Did there come a time when Mr. Glasser was fired? A. Yes, he was.
- Q. When was that about? A. Mr. Glasser asked that he meet with the—
- Q. Excuse me, Mr. Hecht. Just when was it about approximately? A. I would say about two weeks later.

Mr. Rooney: May the record reflect that I am showing Mr. Hecht what has been previously marked Defendants' Exhibit G for identification.

- Q. Will you look at that, Mr. Hecht. My question is, can you identify that? Yes or no? (1376) A. Yes.
- Q. There are several pages there. Does your hand-writing appear on those pages? A. Yes.

Q. Will you tell us what that exhibit is? Without reading from it, just what that exhibit is? A. It is a copy of my diary.

Q. Pages from your diary? A. Yes, sir.

Q. By the way, Mr. Hecht, toward the end of the summer of '70 did you conduct your own investigation of these charges? A. Yes.

Q. What were the results of that investigation? A. I visited various firms. I asked these firms, "Did you

give Glasser money?"

Their answer was yes. I asked them, "Did Glasser tell you, or do you know whether any of this money was given to any of the union officials?" And their answer was, "No, we gave Glasser money; we don't know what he did with it."

Mr. Rooney: I have nothing further.

The Court: Cross-examination?

Mr. Sabetta: No cross, your Honor.

CLIFFORD LA ... DLES, one of the defendants called as a witness in his own behalf, being first duly sworn, testified as follows:

Direct Examination by Mr. Rooney:

(1379) * * *

Q. You are employed by the Furriers Joint Council; are you not? A. Yes, I am.

Q. What particular job do you hold there? A. I'm a business agent.

Q. How long have you been a business agent? A. Since 1965.

Q. How long have you been a member of the union?

A. Since about 1939 or '40.

Q. How long have you been in the fur trade? A. Since I was 16 years old.

Q. What year was that? A. My mathematics are bad. 40 some-odd years ago, I guess.

Q. I take it you have held a number of jobs in the (1380) fur industry, have you, before becoming a business agent? A. Yes.

- Q. How did it come about that you became a business agent in 1965? A. Well, I had been active in the union. I was a part of the committees that go around, overtime committees. I participated in the activities of the union. I guess I was recommended by the management committee to become a business agent.
 - Q. Do you speak any languages? A. Yes, I do.
 - Q. Which ones? A. Greek, Spanish, Yiddish.
- Q. Is the business agent an elected position? A. Yes, it is.
 - Q. You have been elected? A. Yes, sir.
- Q. Would you describe for the Court and jury your duties as a business agent? A. Well, the business agent's job starts at about 7:30 in the morning in the fur market. We are in the market in the morning and we—we are on a corner or in front of our district.

What we do is we listen to the—any grievance (1381) or any complaint that the workers may have and we take —we ask them if it's important, to come down to the union during their lunch hour or after work and we'll follow them through.

After the workers go to the shops, which is about 8:30, we have our breakfast and we go back to the office about nine o'clock.

At that time we go through the mail and it may consist of mail coming from the Associated Fur Manufacturers about a worker who didn't come to work and that, therefore, he's fired or he did not report to work or for other reasons, whereupon we would make a complaint or send a registered letter to the worker asking him to come in and speak to us and tell us his side of the story.

If a worker had been discharged, he will come up to us and visit us that morning. At this time we will make a complaint to the effect that the worker was discharged, whereupon we would contact the Associated representative and try to work it out with the boss up in the shop.

If we cannot work this out in the shop, then it goes into the impartial machinery.

In addition to this we are available, like I said, in the morning from nine o'clock until about maybe (1382) ten o'clock, and then at which time we go to the field, which is in the market. At lunchtime we are back in the office again, which will be until about 1:30. At about 4:30 we are back in the office again and we are always available for the workers.

We also at this time may have shop meetings. We will have possibly about three meetings per shop per year.

- Q. How many shops are there in your district? A. About 100.
 - Q. About how many? A. About 100.
- Q. Go ahead. A. And, in addition to this, we also have what we call district meetings, which means that I will combine my district with another business agent's district and form and have a collective meeting, at which place the activities of the union are brought forth, let the workers know what is going on, to invite open discussion and participation by the membership, and if there's any business before the board, the body to vote upon it. We encourage this.

As a matter of fact, we feel this is very important because in our union the activities of the (1383) workers is our life blood. They are an extension of us and we are an extension of them.

- Q. Excuse me. Do the workers actually come to these shop meetings? A. Oh, yes, to the shop meetings, absolutely.
- Q. Do they come to the general meetings? A. To the general meetings they do come. Of course, we do have people that sometimes don't show up.
- Q. What percentage, approximately, of the workers come to the general meetings? A. I would say about 80 some-odd per cent.

- Q. You mentioned 100 shops. Did you have 100 shops assigned to your district in 1969? A. Yes.
- Q. About how many union workers were employed in those shops? A. About 600.
 - Q. Would that be true also in '69? A. Yes.
 - Q. Is that true today also, about 600 workers? A. Yes.
- Q. Was Sherman Brothers one of the shops that was (1384) in your district in 1969? A. Yes, it was.
- Q. When did you start to cover Sherman Brothers as a business agent in 1969? A. Well, the district of 29th Street between Sixth and Seventh Avenues was given to me in August of '69.
- Q. Who had been the business agent before you? A. Wolliner.
- Q. In August of 1969 did you have occasion to speak to Sam Sherman? A. Yes, I did.
- Q. He was the employer or the manufacturer at Sherman Brothers; was he not? A. Yes, he was.

(1387) * * *

- Q. No, excuse me. Just tell us what the conversation was. A. The background. I entered his shop on a courtesy visit. As a business agent I wanted to acquaint myself with the district—

The Court: Just a minute.

The Witness: I'm sorry.

The Court: Did you hear what that question was?

The Witness: Yes, sir. I'm sorry.

The Court: What did he say? What was the conversation between you?

Q. What did he say? A. He said, "What are you doing here without the Associated representative?"

Q. What did you say to him? A. I told him that I was on a courtesy visit; that I was merely acquainting myself with the district so that the workers and the firms would both know who the new business agent was.

Q. Now, when you visited the shop, did you notice that any goods within the shop were being made on the outside? A. No.

Q. Did Jack Glasser thereafter call you? (1389) A. Yes. About a day or so later I got a very angry call from Jack Glasser reprimanding me because I had visited the shop without him being present. I asked him—I said, "Why get so hot about it? No one else in the whole district made any complaint. What's so special?" He again reprimanded me and told me that from now on if I go up to his shops he ought to be-present. Of course, I let it go.

Q. I take it you have visited other shops when you were assigned as the business agent in this area; is that right? A. Yes, I did.

Q. And you introduced yourself to other employers; is that correct? A. Yes, I did.

Q. Now, you heard Jack Glasser testify, did you not, Mr. Lageoles? A. Yes, I did.

Q. You heard him testify? A. Yes.

Q. Did you hear him testify that you and he were up in the shop together and that he told—in the Sherman shop together and he told you to go downstairs (1390) and wait for him? A. I heard him say that.

Q. Did that ever happen? A. No, sir.

Q. Did he ever give you \$100 on or about this occasion? A. No, sir.

Q. Has Mr. Glasser ever given you any money on any occasion? A. No, sir.

Q. In August of 1970 did you hear Mr. Glasser testify that a worker was fired from Sherman Bros.? A. I heard him say that, yes.

- Q. Did you hear Mr. Glasser describe his conversation with Mr. Sherman where he called Mr. Sherman a drunken bastard for doing this? A. Yes, I heard him say that.
- Q. You were a business agent there in August of 1970, were you not? A. Yes, I was not [sic].
 - Q. Was there any worker discharged? A. No, sir.
- Q. Now, in August of '70 you did file a complaint against Sherman Bros., did you not? (1391) A. Yes, I did.
 - Q. This was in August of 1970? A. Right.
- Q. What was the nature of that complaint? A. That he had given out contract work.
- Q. By the way, who was the shop steward at Sherman Bros. in 1969, do you recall? A. Yes. There was a worker named Sam Weintraub.
- Q. Did you ever have occasion to speak to Mr. Weintraub in 1969? A. Yes. Periodically I spoke to him in the mornings, but Mr. Sam Weintraub in addition to this was also a member of the Joint Council, which is the legislative body of the union. We have a meeting every two weeks of the Joint Council and it's our custom to talk to the workers and ask them—I frequently asked him what was going on up at Sherman Bros. and how work was going along.

Mr. Sabetta: Your Honor, I object to this. It's not responsive and I believe we are going to get some hearsay assertions here. I would like the witness to confine himself.

The Court: Sustained.

- Q. Did you have various conversations in 1969 with Sam Weintraub? (1392) A. Yes, I did.
- Q. Without telling us what he said, did you discuss the possibility of any contracting? A. Yes.
- Q. With Mr. Weintraub? A. I constantly asked him what was going on in the shop.

Q. Now, there are about 600 employees within the Furriers Joint Council; is that right? A. Yes.

Q. And there are shops at each employer; is that

right? A. Yes.

Q. Most of the shops are fur shops, are they not? A. Yes.

Q. But some of the shops are cloth shops? A. Yes.

Q. About how many shops overall are cloth shops? Approximately. A. Four.

Q. Now, are the workers at these cloth shops all members of the Furriers Joint Council? A. No, sir.

Q. Are some of the workers at these cloth shops (1393) members of the Furriers Joint Council? A. Yes.

Q. Is Chateau Creations a cloth shop? A. Yes.

Q. Now, it's been referred to as Chateau Furs. Do you recall that in the testimony? A. I have heard it, yes.

Q. The proper name, is it not, is Chateau Creations? A. Yes.

Q. This is a cloth shop, correct? A. Yes. .

Q. Fake furs? A. Organic. Fake furs, yes.

Q. Who was the employer and manufacturer at Chateau Creations in 1969? A. There was a Mr. Hessel and Mr. Berger.

Q. When were you first assigned this shop, Chateau

Creations? A. In 1967.

Q. Did this shop employ any non-union workers? A. Yes, it did.

Q. Did you attempt to get these non-union workers to become members of the Furriers Joint Council? A. I made some point of trying to talk to them to (1394) see what I could do with them.

Q. Were you able to get them to become members of the uni m? A. Well, you have got to understand something, Mr. Reoney. This is a very ticklish situation. It's not the ordinary fur shop. We have workers who are covered

by the collective agreement. We had about four finishers and about four or five operators. Now, this was a very touchy situation. If we pushed too hard with this shop I had fears that the shop would just move uptown and we would lose the jobs of about nine people. This is why I handled this thing in a very delicate manner.

- Q. What was the average age of these nine people, do you recall approximately? A. The finishers were getting on in their years and had I pushed and had they lost their jobs, I would have had tremendous difficulty in placing them on other work.
- Q. You said moved uptown. What does that mean? A. Into the ILG area.
- Q. What's the ILG? A. Well, the International Ladies Garment Workers Union. The other shop—if I may give some background, there is a shop called American Fur Coat which makes cloth coats, but has fur linings in them. (1395)

Mr. Sabetta: I am reluctant to interrupt, but I object.

The Court: All right, sustained.

- Q. Did you ever visit Hessel's shop, Chateau Creations, in 1969? A. Yes.
- Q. Were there some complaints filed at Hessel's shop in 1969? A. Yes, there were.
- Q. Did Jack Glasser ever give you any money in 1969? A. No, he did not.
- Q. Specifically did Jack Glasser give you \$125 on four different occasions to allow any contracting to go on at Hessel's shop? A. No, he did not.
- Q. Did Jack Glasser give you \$125 on four different occasions in 1969 to allow the shop to employ non-union workers? A. No, he did not.
- Q. When we say non-union workers, how many workers are we talking about? A. Well, at the time—

Q. In 1969. A. In '69. There were about eight, ten workers (1396) that were doing the floor work and the laying of material on tables.

Q. How many of those were members of the Furriers Joint Council? A. I'm sorry I misunderstood the question. I thought you meant how many non-union workers were there.

Q. How many were there? A. Altogether about 18.

Q. How many were members of the Furriers Joint Council? A. Eight or nine.

Q. Jack Glasser never gave you any money; is that correct? A. Absolutely not.

Q. Were you invited by Mr. Hinckley to testify before the grand jury in 1972? A. No, I was not.

(1398) * * *

Cross-examination by Mr. Sabetta:

Q. Mr. Rooney asked if there were complaints filed against Chateau Creations for contracting? A. Yes.

Q. Were there such complaints filed? A. During what period?

Q. Taking the period '67 that we have been focusing on through 1971? A. Yes.

Q. Now, in 1967 a complaint was filed in March? A. There was a complaint filed.

Q. Was that filed by you? A. I believe it was.

Q. Did that ever result in the imposition of any fine?

A. No, because—

Q. Mr. Lageoles-

Mr. Rooney: May he be allowed to finish the answer?

The Court: The question seemed to call for a

yes or no answer. If there is any further explanation, you will have the opportunity to bring it out on redirect.

- Q. Do you remember the filing of that complaint? A. Yes. (1399)
 - Q. You filed it? A. Yes.
- Q. Was it ever prosecuted? A. The contractor complaint?
- Q. Yes. A. We found that there was no work there. The work that we thought was happening was not; the workers that we thought were not working, were working; so there was no substance to the complaint.
- Q. The workers that you thought were not working were working? A. Yes, if I may——
- Q. Please. A. It came to my attention that the firm was giving out work, or there was some complaint made. I made out a complaint. When I arrived at the shop the workers were working, the work was not given out.
- Q. You filed a complaint before you even had a look at the shop? A. Oh, yes.
- Q. Then when you looked at the shop you found that the workers were working? A. Yes.
 - Q. Is that the way you usually did it? (1400) A. Yes.
- Q. You filed a complaint before you took a look at the situation? A. That is right.
- Q. Is it also true that you filed a complaint in June of '71? A. June means nothing to me, Mr. Sabetta.
- Q. Is it true that you filed a complaint in May of '71? A. I don't recall the dates. They don't mean anything to me.
 - Q. Did you file any complaints in '71? A. Yes, I did.
- Q. How many did you file in '71? A. You are talking about contracting complaints?
 - Q. That is right, contracting complaints. A. There was

a complaint filed and it was denied in, I think it was the month of May, and then in June I made a catch. I think that was '71.

- Q. This is 1971? Right? A. Right. I believe it is '71.
- Q. Do you remember when Mr. Glasser left the market? A. I understand it is '72.
 - Q. '72? (1401) A. That is what I understand.
- Q. Well, was Mr. Glasser still the labor adjuster in '71 in your district? A. I don't think he was. Maybe it was '71 for Glasser. I am not sure about Glasser.
- Q. Have you heard the testimony in the last two weeks that he was relieved of his duties, either fired or retired in '70 from the association? A. Yes.
 - Q. Does that refresh your memory? A. Yes.
- Q. So he was gone by the time of the '71 incident? A. Yes.
- Q. And it was in '71 that you first for any time made a catch at Chateau? A. That is right.
- Q. The result of that is that they got a \$2,500 fine and had to add six people? Is that right? A. Right.
- Q. Who was the labor adjuster at that time? A. It was either Sidney Reiss or Epstein. I'm not quite sure.
- Q. Now, for the period of '68 did you file any complaints at Chateau? (1402) A. I filed complaints, yes.
 - Q. I am talking now about contracting. A. No.
- Q. Did you file any complaints in '69 for contracting? A. No.
- Q. The only fine that was ever imposed for contracting during your tenure was in '71? Is that right?

Mr. Rooney: I object to it.

The Court: Well, the witness can answer whether that is so.

Mr. Rooney: I think it is argumentative, your Honor.

The Court: I don't think so. Overruled.

- Q. Is that right? A. Yes, sir.
- Q. Now, you also were the business agent for Sherman Bros.? A. That is right.
- Q. When did you begin there? A. In August of '69—no—what particular day I don't know.
- Q. Was it the beginning of August? A. Might have been. (1403)
 - Q. You have no recollection? A. No, sir.
- Q. Did you look at any records before this trial to help refresh your memory about when you became a business agent for Sherman Bros.? A. I did look at the records and I know it was in August. What time in August I can't tell you.
- Q. The records didn't show what date? A. No, there is no record kept.
 - Q. Who assigned you to that district? A. The manager.
 - Q. Mr. Stofsky? A. Yes, sir.
- Q. Was it his duty to assign business agents for the various districts? A. Yes.
- Q. You don't have any recollection of what part of the month it was? A. I wouldn't be telling the truth if I said anything.
- Q. At the time you were assigned to the district was Mr. Glasser still the labor adjuster? A. Yes.
- Q. Do you remember seeing and dealing with him during that part of the month that you were first assigned? (1404) A. I might have had some business with him, yes, on different complaints, sick leave or something like that.
 - Q. With Sherman Bros.? A. Yes.
- Q. So if Mr. Glasser was hospitalized in the latter part of August it was pretty clear you must have joined Sherman Bros. as business agent some time before that? A. Oh, wait a minute. No, no, I was business agent. In '69 I joined Sherman Bros.—what are we talking about?
 - Q. You joined in '69 in August? A. Right.

- Q. Now, at that time Mr. Glasser was still around? A. Right.
- Q. Now, do you remember whether any complaints were filed in '69 for contracting? A. I don't think so.
- Q. Do you remember when Mr. Glasser left the market in 1970? What part of August? A. I don't think it was August. I think it was later on than that.
- Q. Have you heard the testimony in this case? A. Yes, I have.
- Q. Do you remember Mr. Hecht testifying just late (1405) this morning about the meeting on August 24th after Mr. Glasser had already been relieved of his duties? A. That is right.
- Q. So it was some time prior to that that he left the marketplace? Isn't that right? A. Yes.
- Q. Do you recall how much sooner before the 24th that took place? A. The contract complaints?
- Q. Do you recall when it was when you no longer dealt with Mr. Glasser because he was out of the market-place in 1970? A. I was dealing with him all the way down the line until he was relieved.
- Q. You don't recall what part of the month it was? A. Well, the contract complaints took place in the early part of the month.
 - Q. Took place on August 6th? A. If that is the date.
- Q. Was Mr. Glasser still around at that point? A. Sure he was.
- Q. Do you know what the disposition of it was? A. Of the contract complaints?
- Q. Yes? What was the disposition? (1406) A. He was fined \$250.
- Q. What were the circumstances of that \$250 fine? Was that a catch that you made? A. Yes, I had gotten some information that Sherman was taking work up there. I went up there along with another business agent, and

sure enough we checked it out and we caught him with some stuff that had been given out for contracting.

- Q. Did you make a book analysis at that time? A. I think we made a cursory book analysis, not in depth.
- Q. Were any documents generated as a result of that analysis? A. Well, we had made a catch.
- Q. My question is a different one, Mr. Lageoles. I am asking you whether any documents were created as a result of the book analysis you think you may have done. A. Well, we made a complaint, a case, if that is what you want to call it, a case, a case sheet which spelled out the violation of the firm and was put before the CIA.
- Q. Do you remember a document that was offered in evidence which had been the work product of Mr. Scheflin [sic] [Schifrin] regarding Daniel Furs? Do you remember that document, a sheet of accounting paper? (1407) A. Yes, I do.
- Q. Did you do anything similar to that at Sherman in '70 that you're referring to? A. I don't recall, to tell you the truth.
- Q. Have you made any attempt to look for any such records in connection with this trial? A. I just didn't make it.
- Q. Just didn't make the search? A. I didn't make the search, no.
- Q. Now, you are clear that Mr. Glasser left the marketplace in August some time in 1970, aren't you? A. According to the testimony brought out here.
- Q. Does that refresh your memory about that? A. In the latter part of August, yes.
- Q. He was no longer dealing with you on a day to day basis in the marketplace? A. That is right.
- Q. In November, '70, was there any complaint filed against Sherman Bros.? A. Yes.
 - Q. Was that for contracting? A. Yes.
- Q. What was the disposition of that one? A. I think that is the time we made a full book (1408) examination.

- Q. Then you made a full book analysis? A. Yes.
- Q. You remember that one? A. Yes.
- Q. What was the disposition of that matter? A. He was fined \$250 plus the placing in the shop of four or five additional workers.
- Q. Who decided to make a book analysis in November, 1970? A. Well, it was different—if I may——
- Q. I am just asking you, who decided that? A. I made the decision.
 - Q. You made that decision? A. To go to the office.
- Q. Whom did you consult? A. I consulted with Charlie Hoff.
 - Q. Is that normal practice? A. Yes.
- Q. In other words, when a business agent is considering doing a book analysis he would normally consult with Mr. Hoff? A. Not all the time.
 - Q. But frequently? (1409) A. Yes.
- Q. And you recall doing that on this occasion with Mr. Hoff? A. Yes.
- Q. Now, when you made the catch back in August 6th of 1970 did you consult with Mr. Hoff at that time about doing a book analysis? A. I don't recall.
- Q. Did you hear Mr. Stofsky's testimony that almost invariably in the case of catches as you described them for contracting, book analyses are undertaken by the union? A. Yes, I heard that.
- Q. Is that accurate so far as your practices were concerned? A. Yes, it is accurate.
- Q. Does that help you remember whether or not you undertook a book analysis on August 6, 1970, when the complaint was filed? A. Again I must answer, I don't remember.
 - Q. You don't remember? A. I don't.
- Q. Mr. Lageoles, whose decision is it whether or not to prosecute a given complaint for contracting? (1410) A. The office.

- Q. In other words, you file a complaint in the first instance? A. Right.
- Q. You don't check with anyone else in the office to determine whether you should or can file? A. That is not the way it goes.
- Q. You file it in your own judgment? A. I make a complaint. It is answered. If it is admitted, then a case sheet is made out and it is given to go before the panel or the CIA. The CIA is the impartial machinery.
- Q. If it is admitted it goes before the impartial machinery? A. If it is admitted then it goes before the impartial machinery. If it is not admitted, a book investigation is made and it is all written down and it is called before the impartial machinery if we can't resolve it.
- Q. If the manufacturer denies giving out work as alleged in the complaint, who in the union makes the decision whether or not to bring that matter before the impartial chairman? A. Mr. Sabetta, nine times out of ten firms always deny they give out work even when they are caught red-handed.

 (1411)
- Q. I am asking you, Mr. Lageoles, who in the union makes the decision to prosecute certain complaints for contracting? A. The office staff—Mr. Hoff, myself. The business agent plus Mr. Hoff, myself.
- Q. Usually with Mr. Hoff's participation? A. Together with the business agent, yes.
- Q. Who in the union decides what penalties should be asked from the impartial chairman? A. That is arrived at the impartial hearing.
- Q. Well, the union usually requests, does it not, or states a position as to what should be done? A. Yes.
- Q. Who formulates that position for the union? A. Usually the business agent together with Mr. Hoff.
 - Q. The business agent and Mr. Hoff? A. Yes.

Q. Who is responsible for calendaring the cases before the impartial chairman? A. The business agent named Dave Maginsky.

Q. How long has he had that function? A. As far as

I know, oh, about five or six years at least.

(1412)

Q. Does he have to check with anyone before determining to place the matter on the calendar before the impartial chairman? A. No. These cases when they are made out, these cases are made out, they are put in a folder in a file cabinet, and he just picks them up and he puts them down on the calendar just as if they come.

Q. You have heard of instances, have you not, where complaints were filed which were never prosecuted? A. Yes.

Q. In fact, we have heard in this trial that there are cases where manufacturers have admitted giving out contracting upon the filing of a complaint and that that matter was never prosecuted? Do you remember that? A. I have heard that at the trial here, yes.

Q. Now, would that be Mr. Maginsky's decision to make where a contracting offense was alleged, the manufacturer admitted it, and then it is never calendared or prosecuted before the impartial chairman? Would that be his decision? A. It would rest with the office, I would say.

Q. Well, you see, the office description does not help us too much. Who in the office? A. Well, it would be Mr. Hoff and Mr. Stofsky (1413) possibly. I am not sure.

Q. Mr. Hoff and Mr. Stofsky? A. Yes.

Q. You are familiar also, are you not, with the mechanism of private settlement of these complaints or disputes?

A. Yes.

Q. In other words, not every complaint for contracting needs to go through the impartial machinery? Is that right? A. That is true.

Q. Where a manufacturer admits the offense it can be settled privately? A. Yes.

Clifford Lageoles-for Defendants-Redirect

- Q. Who is usually involved in the private settlement of this dispute? A. Mr. Hoff, together with the business agent.
- Q. Do you remember, Mr. Lageoles, how soon after Mr. Glasser left the marketplace in August, 1970, that you made this big catch on Sherman which resulted in an in-depth book analysis? A. That was, I think, the following month.
- Q. Well, wasn't it in the same month? A. I'm not sure about that. I would have to check (1414) that out. I am sure it was later on, August, September, I believe. I'm not sure.
 - Q. Some time after Mr. Glasser left? A. Yes.
- Q. There is no question about that? A. I would have to check it out.

Re-direct examination by Mr. Rooney:

- Q. Mr. Lageoles, was a complaint filed against Sherman Bros. on August 6, 1970? A. Yes.
- Q. Mr. Glasser was still at work at that time? A. He certainly was.
- Q. This was during the time that Mr. Glasser testified he was paying you off? A. That is right.
- Q. Now, later on in November you said there was a book examination? Is that right? A. Right.
- Q. That means that there was a complaint filed? Is that right? (1415) A. Right.
- Q. And you started to say there was a difference with that one? Do you recall that? A. Right.
- Q. Now, will you explain what that difference was? A. Well, the difference with the first one was that we went up there and we saw some ponchos hanging on the rack and we charged him with contracting, and that was all there was to it. There was just those two [sic] [few] ponchos on the rack and that was it.
 - Q. What happened about the complaint in November?

Clifford Lageoles-for Defendants-Redirect

A. I believe later on—I'm trying to recall it, but I'm not just getting it—

(1416) * * *

Q. Had you received the complaint that this firm had falsified its examination?

Mr. Sabetta: Your Honor, I object to the leading. Now he is trying to put words in his mouth.

Mr. Rooney: I am not putting words in his mouth.

(1417)

The Court: I will allow this. Try not to lead, Mr. Rooney. You can lay a basis for your questions.

A. I had charged the firm with falsifying its books and records, and was denied by the firm. But upon examination we found out that he had, indeed, given out finishing contracting and he was—the decision was that he was guilty and the firm was suspended from the protection of the agreement.

Q. May I see that, please? Do you recall what month that was? A. That was—the decision was—that was I believe—the complaint was made in August. The complaint was made August 6, I believe, together with the

other contracting complaint.

Q. Two complaints in August? A. Yes.

Q. One was on the books and records? A. Yes.

Q. This is while Glasser was still working? A. Right.
Q. You mentioned the CIA. What is the CIA? A. The
CIA is not a national organization. The (1418) CIA
means Committee of Immediate Action. It's an organization—impartial machinery that's set up to take care of any
complaints or grievances that cannot be settled between
the union and the Association.

Clifford Lageoles-for Defendants-Redirect

- Q. You have had various conversations throughout the year with workers employed by your shops; is that right? A. Yes, sir.
- Q. Where do you receive information to file complaints? A. It could be any place, in the street, talking to workers, shop meetings, telephone calls, anonymous sometimes. Sometimes a worker will call you up and tell you what's going on, letters.
- Q. You were asked by Mr. Sabetta about only one complaint being filed. Do you recall that? A. You have to fill me in.
- Q. Were you a business agent between '65 and today? A. Yes.
- Q. During that time have you filed various complaints against various employers for contracting? A. Oh, yes, yes. (1419)
- Q. Do you have any idea about how many? A. Well—
- Q. About how many? A. I do quite a bit. I use that sometimes as a means of bluffing a firm. If I hear the firm may be giving out work and I—we get some kind of a thing in the market about it, I make out a contracting complaint and sometimes it works because the firm is guilty and he thinks that we know what is going on. So sometimes we will do this and it pays off sometimes.

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Florence Levy-for Defendants-Direct

(1426) * * *

FLORENCE LEVY, called as a witness by the defendants, being first duly sworn, testified as follows:

The Court: Proceed, Mr. Abramowitz. Mr. Abramowitz: Thank you.

Direct Examination by Mr. Abramowitz:

Q. Miss Levy, by whom are you employed? A. The trustees of the Health & Retirement Fund of the Fur Industry.

(1427)

The Court: I didn't get the last three or four words. Health & Retirement Fund of——

The Witness: Of the Fur Manufacturing Industry.

Q. Miss Levy, the courtroom is a very big courtroom. You will have to try to keep your voice up. In what connection are you employed by the trustees? A. I am acting executive secretary.

Q. How long have you held that position? A. For about two and a half months.

Q. Could you briefly tell us your functions with the trustees. A. It is my job to supervise the office of the Health & Retirement Fund, which means I take care of collections, the payment of health and retirement benefits and any other—all matters that have to be taken care of by the office of the Fund.

Q. Do you have access to the files of the Fund? A. Yes, I do.

(1429) * * *

Q. Does Mr. Glasser's name appear on that exhibit? A. Yes, it does, as an automatic approval.

Q. On October 15? A. On October 15, 1971.

(1431) * * *

- Q. Miss Levy, the Retirement Fund by whom you are employed consists of representatives from what groups as trustees of that Fund? A. The union, which is the Furriers Joint Council, has three representatives, the Associated Fur Manufacturers has two and United Manufacturers has two.
- Q. It's not the Retirement Fund for the Association of Fur Manufacturers? A. No. It's for the workers who work in the fur manufacturing industry.
- Q. Is the union represented in the pension from the Associated Fur Manufacturers? Is there a union represented in connection with the pension from the Associaton of Fur Manufacturers? A. That's not a correct question, if I may.

Jack Glasser receives his pension because the trustees decided to permit people who worked for the union and for the Association—they treated the Association as an employer and they make contributions for their employees.

(1437)

AL GOLD, a defendant herein, called as a witness in his own behalf, being first duly sworn, testified as follows:

The Court: Proceed.

Direct Examination by Mr. Abramowitz:

- Q. By whom are you presently employed? A. The Furriers Joint Council.
- Q. How long have you been employed by them? A. 14 years.

Q. In what capacity are you presently employed by the Furriers Joint Council? A. I am the organizer of the Furriers Joint Council.

(1438) * * *

Q. In connection with your duties, Mr. Gold, where do you spend most of your average working day? A. Most of the day I am in the fur market area.

Q. In the street or in the shops or what? A. In the street.

(1439) * * *

Q. When you say you have responsibilities with respect to complaints on overtime contracting, can you tell us what you do to accomplish your job? A. Well, I send—I have committees who I send out to check overtime. It's evening complaints—after 4:30, if you want to work after 4:30 in the fur industry you have to get a written permit to work.

Now, I make out complaints to various shops just to check, at random. There is no particular shop. When I think I can send, I send out committees to those shops and they check for overtime.

Q. When you say committees, who serves on the committees? A. Workers. Active workers come down and give us a hand.

Q. They volunteer to work on these committees? A. That's right.

Q. How often do these overtime committees go out?

A. Six days a week, and sometimes on Sundays.

Q. How many shops on the average day do you check (1440) for overtime? A. Well, I send out two types of overtime committees. I send out Associated shop overtime—where you need a member of the Association to go with the committee, I send a representative of the Association. I sent out United shops and sometimes retail shops.

- Q. You do this every day. How many shops in the average day do these committees check for overtime, for example? A. I would say an average of 25 complaints a day. Around that area.
 - Q. 25 a day? A. Right.
- Q. That's done in the early morning or late afternoon or at night; is that correct? A. Well, yes. Early morning is a different setup. Early morning I usually get one member of the Associaton and I meet him in the morning and I send him out. The most you can make in the morning is about three or four complaints because by the time they get around from one building to another it's time to go to work. You know, the workers are starting to work. We try to get in there before the workers start to work to apprehend these violators that go in before 8:30.

(1441)

- Q. Would you tell us your procedures with respect to contracting. A. Well, contracting is something—that's why I am in the market most of the day. It's a very hard thing to catch, a contractor, because of the fact, No. 1, they know me, so if I—in order to catch a contractor, if I can explain, I have to make a direct catch. In other words, if a contractor goes to a manufacturer and I go in with the contractor and catch him wih the material, then that's a direct catch. I catch him in the place of business, but I can see a contractor walking in the street five times a day, or more, and if I can't get him—find out where he is going, there is nothing I can do about it.
- Q. Tell us what you try to do about it. A. What I try to do is I try to find out where he is going. I try to get to the place—if I have an idea where he is going, I try to get to the building before he does; I go up to the floor before he does and hide, you know, in a corner and once he goes into the factory I go in after him.

Q. Who helps you do this? A. Well, actually myself. Only sometimes the business agents are in the market. If one of them are (1442) around the area I would take them along with them. You know, it's better when you have two there.

Q. A little louder, Mr. Gold, please. A. It's better to have two there at the time.

Q. It's usually you and the business agent; is that correct? A. Yes.

Q. When are you in the market looking for this? A. I am down about 7:30 in the morning.

Q. Yes, and then what? A. Then I stay in the market until lunchtime. After lunch I am in the market again until about 4 o'clock and then I go back to the office and I start making out complaints for overtime.

Q. Mr. Gold, do you know Jack Glasser? A. Yes.

Q. How do you know him? A. He represents the Association. I usually send out complaints with him.

Q. Did you ever serve on overtime committees with him? A. Yes.

Q. Excuse me, with him as representative of the Association and you as representative of the union? (1443) A. You mean—no.

Q. Overtime committees? A. No. I never go with him. I send people to go with him.

Q. Did you ever call him into some contracting catch because you needed the representative of the Association? A. You see, once you make a contracting catch, you call the Association. Whoever is there comes over. You know, it could be Jack Glasser. It could be anybody else that works for the Association.

Q. Do you recall occasions let's say in the period 1967 to 1972, when there was a contracting catch and Mr. Glasser was sent over by the Association to represent the Association? A. I probably did. I can't recall exactly if

he came or he didn't come, but it's possible that he did come at one time or another.

- Q. Now, Mr. Gold, during the period 1967 to 1970, did you ever receive any money from Mr. Glasser? A. No.
 - Q. At all? A. No.
 - Q. For any purpose? (1444) A. No.
- Q. Do you know a Mr. Daniel Grossman? A. Everybody knows Daniel Grossman.
- Q. How do you know him? A. He comes to work every morning with a Cadillac and with a chauffeur.
 - Q. Do you know him as a manufacturer? A. Right.
 - Q. In the fur industry? A. Yes.
- Q. You saw him testify here last week; is that correct?
 A. I did.
 - Q. Were you ever on the premises of his shop? A. Yes.
- Q. About how many times from 1967 to 1972 were you present in his shop? A. I can't tell you exactly how many times, but it couldn't have been more than five, six times, if that much.
- Q. Did you ever have a conversation with him about permitting contracting at his shop? A. I didn't get that.
- Q. Did you ever have a conversation with Mr. Grossman about Mr. Grossman being able to be allowed to (1445) contract out work to contractors? A. No.
- Q. Did you ever receive any money from Mr. Grossman at his shop? A. Never.
- Q. Have you ever been to the Yagger Restaurant, Mr. Gold? A. I never knew where it was until I heard—I didn't know where it ever was until I heard Mr. Grossman state it.
- Q. Have you ever been there with Mr. Grossman? A. Never.
 - Q. Or anybody else? A. Never.
- Q. Did you ever receive any money from Mr. Grossman at the Yagger Restaurant? A. No.

- Q. At the bar of the Yagger Restaurant? A. No.
- Q. Or in a car ouside the Yagger Restaurant? A. No.
- Q. Did you ever drive Mr. Grossman from 85th Street to 60th Street? A. No. (1446)
- Q. Did you ever leave any money in your car? A. Never.
 - Q. Or in his car? A. No.
- Q. Were you ever with Mr. Grossman at a coffee shop at Madison Avenue and 33rd Street? A. Never.
- Q. Were you ever at a coffee shop on Madison Avenue and 33rd Street? A. No.
- Q. By the way, Mr. Gold, you heard testimony, did you not, by Mr. Glasser that he used to meet you in a coffee shop at 345 Seventh Avenue. Do you remember that? A. At a coffee shop? He never met me in a coffee shop at—345 you said?
 - Q. I believe so. A. No.
- Q. Is there a coffee shop in the fur district where union people meet? A. There is a coffee shop in the freight of 345 Seventh Avenue.
- Q. Is it a large coffee shop? A. It's a freight coffee shop. It's a pretty (1447) large coffee shop. It's a pretty large coffee shop. People are going in and out all day long there. People go in to work that way.
- Q. Early in the morning of any particular workday, who frequents this coffee shop in 345 Seventh Avenue? A. Workers.
 - Q. Union workers? A. All union workers.
- Q. Is it crowded in the morning before work? A. It certainly is. It is one of the most crowded buildings in the area.
- Q. Do you know a man by the name of Walter Stiel? A. Yes.
- Q. How do you know Mr. Stiel? A. 1963 was the first time I ever came in contact with him.

- Q. How did you come in contact with him in 1963?

 A. He was a non-union shop and we organized him.
 - Q. That's also part of your responsibility? A. Right.
- Q. You organized Mr. Stiel's shop in 1963? A. That's right. I had something to do with the business agent of that district at that time.
- Q. When did you see Mr. Stiel after that? (1448) A. I remember, because—
 - Q. When did you see him? A. In 1970.
- Q. Did you ever see him prior to 1970, Mr. Gold? A. No.
- Q. Let me direct your attention to December of 1968. Were you up in the premises of Mr. Stiel? A. No.
 - Q. Excuse me? A. No.
- Q. Do you remember ever purchasing a coat at Mr. Stiel's place? A. Yes, I did.
- Q. Could you tell us, as best as you can recall, when you purchased that coat? A. 1970.
- Q. Tell us the circumstances of that event, would you please? A. The reason I remember it was 1970 is because in June of 1970 my wife just came out from the hospital—just came out from a heart attack in the hospital and around September my daughter-in-law and myself and my wife talked about buying a fun fur coat.
- Q. A little louder, please, Mr. Gold. A. We talked about buying a fun fur coat.
- Q. A fun fur coat? A. Yes, and I knew Walt Stiel was making that type of fur at that time.
- Q. Could you explain what a fun fur is? A. Well, it's sort of a ski outfit stuff. It isn't an ordinary coat. It's got trimmings on it, different sorts of trimmings on it.
- Q. When happened when you—you said you went up to this place to buy—— A. Yes. My daughter-in-law, my wife, myself and my son. They both purchased coats there.

Q. Who, your wife and your daughter-in-law? A. Right.

Q. Who paid for your daughter-in-law's coat? A. Her

husband

Q. That's your son? A. That's my son.

Q. Who paid for your wife's coat? A. I did.

Q. Did Mr. Stiel ask you how he wanted to be paid for those coats? A. He did. (1450)

Q. What did he tell you? A. He said he wanted cash.

Q. How much did you pay him for the coat you purchased for your wife? A. My wife's coat—if I recall correctly, I think it was \$225.

Q. Do you know how much your son's coat was? A. Yes. He told me. He doesn't remember exactly, but he said it was in the vicinity of \$350 or 375, something like that.

Q. Did you ever receive any money from Mr. Steil to commit contracting? A. No.

Q. In 1968? A. No.

Q. In 1969? A. No.

Q. At any time? A. No.

Q. Did you ever have any conversation with him in the market about allowing him to commit contracting? A. Never.

Q. Mr. Gold, did there ever come a time in April of 1972 that you met with Mr. Glasser? (1451) A. April 1972?

Q. April 1972. A. April-is that the 4th of April?

Q. April 4. A. Yes, I do. I remember.

Q. Can you tell us, as best you can recall, how you came to meet Mr. Glasser that day? (1452) A. I got a call from Mr. Stofsky. He gave me a number. He says, "This is Jack Glasser's phone number." He says, "Call him. He wants to meet us. He will tell you where he will meet us."

I called Glasser, I spoke to him on the phone. He told me where he wanted to meet us, and I asked him exactly how to get there and he explained it to me. I live in Long Island, but I didn't know the area too well. And I picked up Mr. Stofsky at the association. He waited downstairs for me. I picked him up and we drove out there. I remember I parked the car on one side of the street. We walked out and we found this restaurant. I didn't even remember the name until it was mentioned here.

Q. Is that Tiffie's Restaurant? A. Tiffie's.

Q. It is a luncheonette, isn't it? A. That is right. I recall exactly what happened, because he was not in there yet.

Q. Who? Mr. Glasser? A. He was not there. We waited about five minutes, and then I saw him coming down the block. We waited until he got to us, and we walked into this Tiffie's place and we sat down at a table. (1453)

Q. Could you tell us to the best of your recollection what you said, what Mr. Stofsky said, and what Mr. Glasser said? A. The first thing I said, "Gee, you look bad, Jack. What's the matter?" He said, "I am sick and worried and aggravated." He said they are calling him downtown, he has to go downtown tomorrow again, and he was worried. He got in touch with his son. His son is flying in from California. And he says, "I can't go by myself; I need somebody to help me. I need a lawyer. You got to try to get me a lawyer."

Mr. Stofsky was doing most of the talking; I was sistening; and Mr. Stofsky said, "We have no lawyer. All we have are labor lawyers," and there is nobody he knows. Then we decided that maybe if we could call Cammer, our labor lawyer, maybe he can get somebody for Glasser.

I went to the phone and said, "I will see if I can get Mr. Cammer." I called their office and he wasn't there,

and I don't know who gave it to me, Mr. Shapiro or somebody in the office gave Mr. Cammer's home phone number. I don't know whether I got him that same evening or the next morning, and I told him what we needed. I says, "This guy is in pretty bad shape; he is sick, and I would like to know if you know somebody who can help him, a (1454) lawyer?" He says he didn't know anybody.

Q. You're talking about Mr. Cammer? A. Yes, Mr. Cammer. He says, "But there is a lawyer in our office

who maybe will handle the case for him."

Q. Did he mention his name, do you recall? A. No, he didn't mention the name. He told me to give Jack Glasser their phone number. I think I am almost positive that he said that, give Jack Glasser Cammer's phone number, and I think he or his son who he expected in the next morning would call Mr. Cammer and he would recommend this lawyer to him.

Q. Did you ever tell Mr. Glasser that the union was going to reimburse him for the expense of this lawyer?

A. No.

Q. Did you ever hear Mr. Stofsky say that? A. No, of course not.

Q. At any time, either at Tiffie's or after Tiffie's? A. No.

Q. Do you know, in fact, who represented Mr. Glasser?

A. After I gave Glasser's son the phone number of Mr. Cammer I never knew what happened after that. I didn't hear anything about that any more. I don't know (1455) whether he contacted him or not.

Q. When was the last time that you saw Mr. Glasser, other than the time he testified in court last week? A. Since that time, since the time we met at Tiffie's.

Q. Mr. Gold, you testified that you spent most of your day out in the market. Is it fair to say that everybody in the industry knows you and knows you to be the union organizer?

Mr. Sabetta: I object. I don't know how he can speak for what anyone else knows.

The Court: Sustained.

- Q. But you are on the street all day long? A. Yes.
- Q. Manufacturers come up to you during the day, talk to you? A. They don't come and talk to me. I see everybody during the day. During the morning I meet all manufacturers going to work, all workers going to work. I see everybody.
 - Q. And you had been doing that for 14 years? A. Yes.
- Q. By the way, were you ever invited or subpoenaed to testify in a grand jury? A. No. (1459) * * *

Cross-examination by Mr. Sabetta:

- Q. Now, you have testified about your duties as organizer for the union? Is that right? A. Yes. (1460)
- Q. You say you spent most of your time on the streets? Is that right? A. Right.
- Q. Is it also accurate to say that from time to time you visit the shops of contractors? A. Yes, once in a while I do.
- Q. Directing your attention now specifically to the period 1967 to 1971, during those four or five years did you make visits to contractors' shops? A. Myself personally?
- Q. Yes. A. I don't think too many. If I did, I sent committees to some of them.
- Q. Do you have any recollection of making such a visit during that period of time? A. Unless it was during the period of vacation time or before signing the agreement.
- Q. In other words, apart from vacation requests and apart from the period surrounding a negotiating period

for a new contract, your best recollection is now that you never made such a visit? Is that right? A. Yes.

Q. Do you recall the testimony of Mr. William Poulos in this courtroom? (1461) A. Yes, I do.

Q. Do you know back in 1967 through 1971 that Mr. Poulos was acting as a contractor for Grossman? A. No.

Q. Did you ever hear any rumors in the market to that effect? A. I heard a lot of rumors about a lot of people, but I never could prove anything.

Q. With regard to Mr. Poulos, did you ever have any information that Mr. William Poulos was operating as a contractor for Mr. Grossman? A. I knew he was a contractor. If I did have suspicion, it was not only for Grossman, but for other manufacturers, too.

Q. Did you ever visit Mr. Poulos' shop? A. I would say I was there at least three times.

Q. During this period of '67 through '71? A. Right.

Q. Was that again in connection with a vacation request or negotiating period? A. Well, maybe at one time I went up to him to talk to him about the union, and not with myself.

Q. With other people? A. Yes.

(1462)

- Q. You heard him testify that during one of the visits to his shop you roamed around and looked at some of the skins? A. I heard it, but it is not true.
 - Q. That testimony is not true? A. No.
- Q. So that when he said the Grossman seal was on some of the skins you looked at on one or more visits, that testimony wasn't accurate? A. I never looked at any of the seals in his place, because you could never get into his factory.
- Q. What did you do when you entered the shop? A. He closed the factory door and had us stay in the show-room. He said, "If you want to talk to me, talk here."

- Q. The factory door was closed? A. When there were no factory workers, the factory door was open.
- Q. So his testimony to that effect was not accurate? A. That is right.
- Q. Did Mr. Stofsky ever go with you to Mr. Poulos' shop? A. No. He don't go out to no shops.
- Q. He doesn't visit shops at all? Is that what (1463) you're saying? A. That is right.
- Q. In your 14 years as organizer you have never seen Mr. Stofsky at any of these shops of contractors? A. No.
- Q. Now, Mr. Gold, besides you are there any other persons who seek to enforce the provisions against contracting? A. Every business agent that is involved enforces, tries to enforce the provisions.
- Q. Are there any people other than you and the business agents engaged in those activities? A. Yes, I have another man who works with me.
- Q. Who is that? A. A fellow by the name of Weissman.
 - Q. Is that Mr. Hymie Weissman? A. That is right.

The Court: Excuse me. We will take five minutes. Don't talk about the case.

(Recess.)

By Mr. Sabetta:

- Q. Now, in addition to Mr. Weissman are there any others who assist you in enforcing the provisions against contracting? (1464) A. Yes.
- Q. Who are they? A. Workers in the factories who come after 4:30, and I send them out on committees, complaints on shops.
- Q. We are talking now about contracting complaints?

 A. Any kind of complaint.
 - Q. Including contracting complaints? A. That is right.

(1467) * * *

Q. Do you remember Mr. Poulos' testimony that on a couple of occasions the building in which this shop was located was picketed by the union? Do you recall that? A. Yes.

Q. Is that accurate? A. Yes.

Q. And again those men in the picket lines were composed of union membership? Is that right? A. Yes.

Q. Some of them were paid? A. Some of them. Some of them that were not working came in to give us a hand, a lot of unemployed (1468) workers who were very interested in their livelihood.

Q. Now, Mr. Gold, when for the first time did you meet Mr. Glasser? A. The first time? Let's see. I would say I got on the staff in '59. I was on the committee maybe a few years prior to that. I would say '55.

Q. How frequent was your contact with him from '55 on through 1970? A. Very seldom. If he was the man from the Association on a committee, I would go with him. This is not myself. With other people on the committee, more than one would go.

Q. Would you say you saw him on the average of at least once a week or so? A. No. Sometimes Mr. Fiegus would go or Mr. Liebowitz would go, or Mr. Epstein would go, or Mr. Reiss would go.

Q. Did you ever socialize with Mr. Glasser? A. No.

Q. Ever have dinner with him? A. Never.

Q. Ever have lunch with him? A. No.

Q. Now, in 1970 shortly after Mr. Glasser was (1469) relieved of his duties at the Association did you have occasion to talk to him at that time? A. No.

Q. Not at all? A. Until I met him on the 4th, when I met him in Tiffie's.

Q. In '72? A. Right.

Q. So from the period of time that he was fired or re-

leased until you met him at Tiffie's you had no contact with Mr. Glasser? A. Not at all.

- Q. You didn't speak to him over the telephone? A. No.
- Q. Do you know, incidentally, if Mr. Glasser ever worked for the union? A. Not that I know of.
- Q. Did he ever receive any moneys from the union?

 A. Not that I know of.
- Q. Did he ever deliver any documents to the union? A. Not to me.
- Q. Do you know if he ever delivered them to anyone else? A. I don't know. How should I know? (1470)
 - Q. You don't know? A. No.
- Q. Did Mr. Hoff ever tell you that Mr. Glasser delivered documents to the union? A. No.
- Q. Did Mr. Stofsky ever tell you that Mr. Glasser delivered documents to the union? A. No, they don't confide in me about those things.
- Q. How long have you known Mr. Stofsky? A. Mr. Stofsky? I would say I think '55, '54—'55, '54.
- Q. You told us before that you were appointed to your position as organizer? A. Yes.
 - Q. Who appointed you? A. Mr. Stofsky.
- Q. Who has reappointed you over the years? A. The Joint Council.
- Q. Has anyone recommended that you be reappointed to that position? A. Well, it comes from management.
 - Q. Is Mr. Stofsky a member of that committee? A. Yes.
- Q. Do you remember from time to time acting as (1471) chauffeur for Mr. Stofsky? A. Chauffeur? I'm not a chauffeur.
- Q. On the evening of April 4, 1972, did you drive Mr. Stofsky to Tiffie's? A. Yes.
- Q. Had you ever driven him any other place in a union car prior to that? A. I drive him home sometimes. I'm not his chauffeur, though.

Q. You are not a paid chauffeur, but sometimes you perform the service of driving him around? A. He can ask anybody on the staff. It is not a crime to drive the manager of the union if he wants to go some place.

Q. I'm not suggesting it is. I am asking you if you did it? A. Certainly.

- Q. On April 4 you had a call from Mr. Stofsky? A. Yes.
- Q. By phone? A. Yes.
- Q. Will you tell us again what he said on that occasion and what you said? A. He gave me a phone number. He said, "This is (1472) Jack Glasser's phone." He said, "Call him up and he will tell you where he wants to meet us. We have to meet him." And I called. And he gave me directions how to get there. I picked Mr. Stofsky up, I took the car out of the garage; I picked Mr. Stofsky up at the Association and we drove out there and we met Glasser there.

Q. How long did it take you to drive from New York to Tiffie's Restaurant in Queens? A. Well, the exact time I dont remember, when it was, what time it was, but it was late afternoon, and I would say half an hour.

Q. Will you tell us what you said to Mr. Stofsky and what he said to you during the car ride to Tiffie's Restaurant during that half hour? A. All we discussed is he said, "I wonder what he wants. There's nothing to talk about." We were trying to figure out why he would call that is so important that he would want him up there. He didn't want me up there. He wanted Mr. Hecht. I only drove him up there.

Q. What did you say in response to Mr. Stofsky's question about what Mr. Glasser wanted? A. I said I couldn't imagine, I'm not a mindreader, (1473) I couldn't figure out what he wanted him there for.

Q. Did Mr. Stofsky ask you to ask Mr. Glasser when you phone him what it is Mr. Glasser wanted to speak to him about? A. I never had a discussion with him about anything. All he told me was where to go, where to meet him.

- Q. So that as far as you and Mr. Stofsky were concerned, you were going up to see Mr. Glasser to talk about some unknown subject? A. Not me. Mr. Stofsky.
 - Q. You were driving him up there? A. That is right.
- Q. But neither of you so far as Mr. Stofsky's conversation revealed had any idea what it was you were going to talk about? A. No, sir.
- Q. When you arrived at the restaurant you say Mr. Glasser was not yet present? A. No.
 - Q. And he did arrive shortly thereafter? A. Yes.
- Q. What was the conversation after he arrived? A. He says, "You know, I am so sick, I am in bad shape, I am sick, and" he says, "on top of it all they (1474) are calling me down tomorrow downtown."
- Q. Did he say who was calling him down? A. I don't remember if he mentioned the name or not, but I know it was something about going downtown. I don't know whether he mentioned Mr. Hinckley's name or not. I wouldn't swear to it. I don't remember.
- Q. What else did he say? What else did anyone else present say? A. And he said he is very sick and his wife is sick and he called his son in California and he is coming in and whether we can get a lawyer for him, and Mr. Stofsky says, "We don't have any lawyers; all we have is our lawyer. Our lawyer is a labor lawyer. And then the thought came—it's possible that I said—"How about calling Cammer." I don't know who said it, to call Cammer and maybe he can get somebody for him.
- Q. Did Mr. Glasser say anything about why he was being called down the next day? A. No.
 - Q. He said nothing about that? A. No, sir.
- Q. You are sure of that? A. Maybe he did. I didn't hear all the conversation (1475). Oh, yes, one time I went up and got some coffee for them. I will admit to the fact that I didn't hear the entire conversation. I think I got Glasser a milk and I got myself some coffee and Mr.

Stofsky some coffee. So at one period there I was not sitting at the table.

- Q. Did you hear either Mr. Glasser or Mr. Stofsky mention that Mr. Glasser had been accused of taking money from union manufacturers? A. Please repeat that?
- Q. Yes. During the time that you were present at Tiffie's did you hear either Mr. Stofsky or Mr .Glasser say that Mr. Glasser had been accused of taking money from union manufacturers? A. We all knew about that by then.
 - Q. You already knew about it by then? A. Right.
 - Q. You already knew about it by then? A. Right.
- Q. You don't remember that that was mentioned, though, at this meeting? A. I think I remember vaguely a conversation about that. He says something to the effect that "They accuse me of taking money," or something to that. He said, "Why don't they check on George (1476) Greenberg? Why don't they check on Fiegus," he says, "They say I took money; find out what they took."
 - Q Did Glasser admit that he had taken moneys from
- manufacturers? A. He didn't admit it to me.
 Q. He didn't admit it while you were present? A. No,
- O. Do you know whether in fact he did take moneys from manufacturers? A. How should I know?
 - Q. Did you ever discuss it with him? A. No. Never.
- Q. So, your best recollection of that meeting is that Glasser was telling you and Mr. Hoff—I'm sorry, Mr. Stofsky, that he had been wrongly accused of taking money from manufacturers? A. I didn't say that. No, I never heard him say anything of that sort. I never heard him say anything like that.
- Q. Well, Mr. Glasser said that he had been accused of taking money from manufacturers, did Mr. Stofsky say anything? A. Did he say anything?
 - Q. Yes. (1477) A. No. What could he say?
 - Q. He just sat there mute? A. I don't remember the

exact words he said. If he said anything, I can't remember. I can't remember every word that was said there.

- Q. Do you remember if Mr. Stofsky asked Mr. Glasser is it true that you took moneys? A. He may have asked him did you take and I think—he could have said no, I don't recollect. I couldn't remember.
- Q. Are you guessing now or do you have a recollection that that may have taken place? A. A recollection.
- Q. You do remember now—A. No. I wouldn't say exactly. I don't remember exactly how he said it, but it's possible that he said it. I can't remember. It's possible not to remember everything.
- Q. Your best recollection is that there is a possibility that Mr. Stofsky asked whether it was true and Mr. Glasser denied it? A. It's possible something like that came up because he accused Greenberg and Fiegus of taking money, so maybe something like that did come up, but it's possible (1478) I wasn't there when it was said.
- Q. Is it also possible that Mr. Stofsky asked Mr. Glasser and Mr. Glasser said it was true and that also other people from the Association were taking money? A. It's possible, yes.
 - Q. That's possible also? A. Yes.
- Q. Do you recall whether Mr. Stofsky asked Mr. Glasser did he give any moneys to any union officials? A. I never talked about that, no.
 - Q. That was never mentioned? A. No.
- Q. Did Mr. Stofsky ever direct you to begin any investigation into whether union officials had taken any of this money that Glasser had supposedly taken? A. Gave me instructions?
 - Q. Yes. A. No, sir.
- Q. Did Mr. Stofsky, in your presence, ever ask anyone else to begin any such investigation? A. Not that I know of, no. I do recall one thing that Mr. Glasser said.
 - Q. At that meeting? A. Right.

(1479)

Q. Tell us what that was. A. "No matter what happens," he says, "I'm not going to jail, no matter who I got to take with me."

Q. Did he mention any names of who he might take?

A. The only names he mentioned were Greenberg and

Fiegus.

Q. So now having remembered that statement, do you now recall that Glasser said he had been accused of taking moneys from a manufacturer? A. I knew it. I knew it. Everybody knew about it by that time, that the reason he was fired was that.

Q. At one point in the conversation Mr. Stofsky told you to call Mr. Cammer; is that right? A. That's right.

Q. And you made a call? A. Yes.

Q. You talked to Mr. Shapiro? A. I don't remember who. Either Mr. Shapiro or the girl in his office, and they told me Mr. Cammer was not there any more.

Q. This was a phone call to New York City, to Man-

hattan; is that right? A. Yes.

Q. You got a number for Mr. Cammer? (1480) A. I don't remember whether Mr. Cammer gave me a number or he told me to give the number to Glasser or his son and to call him and he would get—help him get in touch with the lawyer. Just how it happened, I don't remember.

Q. Did you give Glasser a number that night at Tiffie's?

A. I don't remember if I gave it to Glasser or his son.

Not that night, the next morning.

The Court: Where?

The Witness: Over the phone. Your Honor, I think—I don't remember whether it was Glasser or his son because I spoke to his son at one time.

The Court: Where were you then?

The Witness: In the office.
The Court: In Manhattan?

The Witness: Yes. In the office of the union.

- Q. Now, Mr. Gold, before you said that everyone in the marketplace knows Dan Grossman; is that right? Do you remember that remark that you made? A. Everybody in the market knows Dan Grossman? Yes. (1481)
- Q. Basically you said something like that? A. Yes. They know who Dan Grossman is.
- Q. Is it fair to say that Dan Grossman was considered to be a fairly successful manufacturer of fur garments? A. Maybe. It's possible. I don't know his business. I don't have the amount of business he does.
- Q. Well, you knew that Mr. Grossman ran a successful firm, did you not? A. I know a lot of people that run successful firms.
- Q. Did you know that Mr. Hoff was his business agent from 1968 through about '72 or so? A. Yes.
- Q. Did you know also that Mr. Hoff had been assigned to only fairly large manufacturers as business agent? A. Yes. I knew that because he became the assistant manager and he had other duties to perform, so he got a smaller district.
- Q. So, he was handling—that is Mr. Hoff was handling the larger shops, was he not, those that produced substantial—— A. I imagine the reason of that is because Mr. Hoff was one of the senior business agents and he knew—(1482) he probably was entitled to that, or that's the way it worked out. He was the longest business agent at that time. He was there the longest.
- Q. So he was given the somewhat more important shops than just the run-of-the-mill shops; is that right? A. Yes.
- Q. And Mr. Grossman's shop was one of those shops, was it not? A. Yes.
- Q. Did you know during the period of '67 through '71 that Grossman was contracting out work? A. I didn't know. I suspected him, and I probably knew, too, but I never could grab him.

Q. Well, you knew that other business agents had filed complaints against him, didn't you? A. Yes. I suspect a lot of shops that had been given contracting, just as much as Mr. Grossman, too.

Q. I am asking you now whether you knew, not whether you suspected, that Mr. Grossman was giving out—— A. I had an idea he was, yes. I would say he was, yes.

Q. You have heard testimony, for instance, that Mr. Grossman was fined \$150 at one point; right? A. Yes. (1483)

Q. And you knew that? A. Yes.

Q. Part of your duties would be to keep abreast of all the contracting complaints and fines, would it, to find out what's going on in contracting in the market? A. Yes. To the best that I can.

Q. Did you, ever during the period of 1967 through the end of 1971, ask any volunteers from the union membership or pay any individuals in the union membership to place themselves at the site of Dan Grossman's shop to see whether or not people were going in and out with bundles all day long? A. You mean concentrate on Mr. Grossman himself?

Q. Right. Focus on his shop. A. We tried it a few times, yes.

Q. Would you tell us what you did in that regard? A. Well, we put somebody in the freight of 333 and somebody in the front and if anybody that we thought was a contractor or suspected anybody, we would try to follow up on it. It is very hard, though.

Q. It is your best recollection that you were that you were just never successful during those times; is that right? A. I can give you a lot of reasons why we weren't (1484) successful.

Q. Let's start with the question of whether or not you were successful. Were you successful on any of those times? A. Yes. Once or twice we were.

Q. Do you recall when that was? A. Maybe in '64, '65 I caught him once or twice on finishing contractors, if I recall correctly.

Mr. Abramowitz: A little louder, please.

A. I think about twice on finishing.

Q. Anything after '64 or '65? A. I personally did not.

Q. You were—— A. I wouldn't remember, though, if he was caught.

Q. Well, you were principally charged with supervising the contracting clause, were you not? A. Yes.

Q. Your testimony today is that you don't recall whether you ever directed any individuals to focus on Grossman's shop after 1965—— A. Yes. How long can you focus on a shop? How long can you stay there? I mean, after all, we are only human beings. You can't stay there from seven o'clock (1485) in the morning until ten o'clock at night and focus on him alone.

Q. Mr. Gold, I am asking you a simple question. It's a little different from the one you are answering. I am asking you whether after 1965 you ever directed or asked any individuals to focus on Grossman's shop in an attempt to catch contractors. A. If we would have a strike in the building of 333, we would always concentrate on Grossman.

Q. But you never singled out Grossman for special treatment during that period? A. Maybe we did. I don't remember.

Q. You just don't recall? A. Maybe I did and maybe I didn't.

Q. Did Mr. Stofsky ever tell you that Mr. Grossman was one of the most outrageous violators of the contracting clause of the contract? A. He didn't have to tell me. I knew it.

Q. Knowing that, you can't now recall whether you ever assigned any particular individuals to focus on his shop?

A. It is very hard to—it was very hard to catch him contracting. The methods used were too hard to catch him. We couldn't catch him.

(1486)

Q. Did Mr. Hoff ever make any request of you to focus on Mr. Grossman's shop for special treatment? A. Special? No, not special. He would say, "Try to see what you can do with Grossman," maybe once in a while he would tell me. "See if you can make a catch of Grossman," or something of that sort.

Q. Did either Mr. Stofsky or Mr. Hoff ever ask you to try to locate the contractors for Mr. Grossman? A. It's

very hard.

Q. Now, Mr. Gold, the question is not whether it's hard or easy. The question is whether or not Mr. Stofsky or Mr. Hoff ever asked you to do that. A. Mr. Sabetta, they don't have to ask me. That's my job. That's my duty to try and contact them.

Q. Is it your testimony that neither one of Mr. Stofsky or Mr. Hoff ever made suggestions to you or made requests to you regarding which firms you were to focus on? A. Special focus? No. I don't think anybody ever gave me

any special focus.

Q. So, in your 14 years as the organizer for the union position which you were first appointed to by Mr. Stofsky, you never received any directions or requests (1487) from him to focus on any given firm; is that your testimony? A. Any given firm? No. Because this you don't—mostly you have to concentrate on everybody, because it isn't a question of—you can be on—you can be on 30th Street and Seventh Avenue and the contractor can be going into 333 Seventh Avenue. You can't be there all the time in one spot.

Q. Mr. Gold, would you take a look at this exhibit,

please.

Mr. Abramowitz: Which one is it? Mr. Sabetta: 15 in evidence.

- Q. Have you ever seen that document? A. No.
- Q. Who is Arthur Schifrin? A. He is the accountant He is the business agent and does some accounting work for the union.
- Q. He makes the book analysis for the union does he not?
 A. I think so, yes.
- Q. Keep your voice up, Mr. Gold. A. I think he does, yes.
- Q. From time to time after contracting complaints are filed, he goes into a firm's books with the intent to (1488) try to find out who the contractors are; isn't that right? A. Well, sometimes the business agent of the shop does it himself, too. We don't do it to all the shops.
- Q. And sometimes they might even do it together, isn't that right, a business agent and Mr. Schifrin? A. And a member of the Association.
 - Q. And the trade association member? A. Right.
- Q. Now, did Mr. Schifrin ever show you this exhibit, Government's Exhibit 15? A. Never.
 - Q. He never did? A. No.
- Q. Did he ever later come to you after October 21, 1969 and tell you, Mr. Gold you better focus on Lou Waxman because he is a contractor? A. Lou Waxman?
 - Q. Yes. A. I don't recall.
- Q. Did he ever mention to you the name of Royal Fashion as a contractor? A. Royal Fashion? 307 Seventh Avenue; is that the Royal Fashion?
- Q. He makes book analysis for the union, does he not? (1489)
- Q. Do you recognize the name? A. It sounds familiar, but I can't recall where they are exactly.
- Q. Have you ever visited that shop? A. No. Personally myself? As an individual?
 - Q. Right. A. No. Royal Fashion? No.

- Q. Have you ever sent anyone else there? A. Committees? It's possible that I did. I can't remember everybody I sent and where I sent them.
- Q. Did Mr. Schifrin ever tell you that Irving Chaiken was a contractor and that you ought to pursue him? A. I knew he was a finishing contractor. I know that.
 - Q. You knew that? A. Of course.
- Q. Did you ever assign people to Mr. Chaiken's location to have followed any people who left his shop with garments? A. No.
- Q. Were you aware of the fact in 1969 that Lou Waxman was a contractor? A. I don't recall the name even. (1490)
- Q. Were you aware of the fact in 1969 that Royal Fashion was doing contracting? A. If it's the Royal Fashion you are talking about, it probably is, maybe.
- Q. I didn't hear the answer. A. If it's the Royal Fashion that I think he is talking about, maybe I did.
- Q. They were doing contracting? Did you take any steps in 1969 to see if Royal Fashion was not able to do any further contracting? A. Mr. Sabetta, I want you to know one thing. I am the only one by myself. I can't control the whole market by myself. I can't be in 600 shops at one time. Now, I got a big district to take care of and I can't be there—every place at one time. If I am on 30th Street, I can't be on 29th Street. If I am on 29th Street, I can't be on Eighth Avenue.
 - Q. Is the answer to my question, Mr. Gold, no? A. No.
- Q. You have never done anything? A. Not that I—unless I sent committees up there.
- Q. Are you familiar with the name of Armand Freid? A. Armand Freid? This guy's been out of the trade I don't know how long. I know his name, but he is not in (1491) the trade any more.
 - Q. Who was he? A. He was a manufacturer.
 - Q. Was he a union or non-union shop? A. Union shop.

- Q. Are you familiar with the name N. D. Furs? A. N.D.?
 - Q. N.N. Furs. A. It don't strike me, no.
- Q. Incidentally, Mr. Gold, do you know a Mr. Sam or Themis Poulos? A. Themis Poulos? The name is familiar. He is a contractor.
- Q. Did you ever visit his shop? A. There are so many Poulos' I am trying to find out where he was. It's possible that I did, or it's possible that I sent somebody else up to visit him.
- Q. Did you ever have a conversation with Mr. Grossman about Mr. Sam Poulos? A. With Themis Poulos?
- Q. Did you ever have a conversation with Mr. Grossman about Sam Poulos, Themis Poulos?

Mr. Abramowitz: Sam or Themis? Mr. Sabetta: They are the same. (1492)

- Q. They are the same, aren't they? A. I don't know. There must have been about four or five Poulos' in the fur market. That's why I said Themis.
- Q. Isn't it a fact that sometimes Themis Poulos was also called Sam Poulos? A. I wouldn't know.
- Q. Do you know a Sam Poulos? A. If it's Themis Poulos, then I know Sam Poulos.
 - Q. What name are you familiar with? A. Themis.
- Q. All right. Do you know a Themis Poulos? A. I heard of him, yes.
 - .Q Was he a contractor? A. Yes.
- Q. Did you ever speak to Mr. Grossman about Themis Poulos? A. No.
- Q. Did you know that Themis Poulos was a contractor for Mr. Grossman? A. Did I know it? No.
- Q. You never knew that? A. It's possible that he was, but I never knew it.

(1493)

Q. You never knew it? A. No.

Q. Now, Mr. Gold, the market is about three blocks in length, isn't it? A. In length. How about the width?

Q. And it goes from Sixth to Eighth Avenue, isn't that right? A. Yes.

Q. That's a fairly small area, isn't that right? A. Not for one man.

Q. Haven't you, in the course of your testimony, identified numerous other union members who you have called upon to assist you in your duties? A. Not during the day.

Q. Not during the day? A. No.

Q. Only during the morning and the afternoon? A. And the evening.

Q. If not during the day, who has been standing on the picket line for Royal Mink for the last 12 months? A. I told you we hired people.

Q. You hired people? A. Yes. An unemployed worker. We put him to work. What's wrong with that?

(1494)

Q. So I am saying in addition to you there are a few other people, aren't there, that render you assistance from time to time? A. It's not assistance. A man stands on the picket and he is picketing a place, he is giving me assistance? What kind of assistance is he giving me?

Q. So, the bottom line, Mr. Gold, is that you are out there in the marketplace all alone during the 12 months of the year trying to enforce this contracting clause; is that right? A. And sometimes Sundays, too.

> Mr. Abramowitz: I object. The Court: All right, sastained.

A. And sometimes Sundays, too.

The Court: All right, sustained.

Ben Thylan-for Defendants-Direct

Q. Is there any doubt in your mind that contracting is considered by Mr. Stofsky and Mr. Hoff and Mr. Lageoles and by yourself as one of the greatest evils facing organized labor in the fur manufacturing industry? A. In our industry it is, yes.

BEN THYLAN, a witness called on behalf of the defendants, being first duly sworn, testified as follows:

Direct Examination by Mr. Abramowitz:

(1507)

Q. Mr. Thylan, try to keep your voice up so everybody can hear you. What is your occupation, Mr. Thylan? A. Fur retailer.

Q. How long have you been a fur retailer? A. 23, 24 years.

Q. Will you tell us the name of your retail corporation?

A. Ben Thylan Fur Corporation.

- Q. What is the Master Furriers Guild? A. The Master Furriers Guild is an association of a number of New York retailers who have combined into a group so that they would have some sort of an organization in the fur industry.
 - Q. Do you know George Stofsky? A. Yes.
 - Q. Do you see him in the courtroom? A. Yes.
 - Q. Please point him out. (Witness indicates.)
- Q. Please describe him for the record. A. He is tall, gray haired——

The Court: Is the identification conceded? Mr. Sabetta: Yes.

(1508)

Q. Mr. Thylan, did there come a time when you became president of the Master Furriers Guild? A. Yes.

Q. Do you recall approximately when you became president? A. About seven years ago.

Ben Thylan-for Defendants-Direct

Q. How long did you hold that position? A. Four

years.

Q. Could you tell the court and jury, Mr. Thylan, if there is a staff at the Master Furriers Guild? A. Yes, we have a manager and I believe we have a part-time secretary.

Q. During the period that you were president who was manager of the Master Furriers Guild? A. A fellow

by the name of Herman Paul.

Q. When did Mr. Paul cease to become manager of the Master Furriers Guild? A. Approximately three years ago.

Q. You mean 1971? A. About that, yes.

Q. Did there come a time during 1971 when you were looking for a replacement for Mr. Paul? A. Yes.

- Q. Could you tell the court and jury who you spoke (1509) to in connection with the finding of a replacement for Mr. Paul? A. Well, originally the executive board of the Master Furriers Guild got together and we decided we had to go out and look for someone else, because Mr. Paul got very ill and he figured he would not go on too long. And word was sent out, and there were a number of people that were thought about. And one of them was a young fellow—I don't recall his name—and the other fellow was Mr. Jaffee.
 - Q. Is that Harry Jaffee? A. Yes.

Q. Do you know him, by the way? A. Yes.

- Q. Did you know whether Mr. Jaffee had worked for the Furriers Joint Council? A. Yes.
- Q. Did there come a time during this period when you were looking for a replacement that you spoke with Mr. Stofsky? A. Yes.
- Q. Could you tell the court and jury is you can recall approximately when you spoke to Mr. Stofsky about this?

Ben Thylan-for Defendants-Direct

- (1510) A. It must have been three years ago approximately.
 - Q. In 1971? A. Yes.
- Q. Could you tell us was it a personal meeting or was it a telephone conversation? A. A telephone conversation.
- Q. Who called who, Mr. Thylan, if you can remember? A. I called Mr. Stofsky.
- Q. Could you tell the court and jury as best you can recall what Mr. Stofsky said in this conversation and what you said in this conversation? A. Well, I called for the reason that I wanted to inquire into the background and the thinking of the fur union in regard to Mr. Jaffee if he were to become our manager, and, naturally, I called the union, I spoke to Mr. Stofsky and explained to him that we were thinking of replacing Mr. Paul because he was terribly sick and Mr. Jaffee was one of the fellows we were thinking of employing.
- Q. What did Mr. Stofsky say, if you can recall? A. And he said he didn't think it was such a good choice because I would know very well about Mr. Jaffee's shenanigans and a number of other factors that went on, that it wouldn't have been to our advantage, and, naturally (1511) I just took the thing in concept and checked it out at that.
- Q. What did you understand Mr. Stofsky to mean about shenanigans? A. There was talk and rumor about things going on that were not exactly ethical.
 - Q. Did Mr. Jaffee get the job? A. No.
- Q. Did you tell anybody about the conversation with Mr. Stofsky concerning Mr. Jaffee? A. Yes, some part of the executive board had gotten together with Mr. Herman Paul to discuss the subject of who was to replace Mr. Paul, who knew that he was dying and was extremely strong about the whole setup, and when we got to talk about Mr. Jaffee, I told him that the union doesn't seem to be keen on Mr. Jaffee for the reason that I had said previously.

Ben Thylan—for Defendants—Cross Charles Hoff—for Defendants—Direct

Q. Now, directing your attention to 1971 how much was the salary at that time? A. I believe it was about \$10,000 plus a pension.

Q. That would be a separate pension of the Master

Furriers Guild employees? A. That is correct. Cross-examination by Mr. Sabetta:

(1513) * * *

Q. You have described a conversation you had with Mr. Stofsky over the phone. Do you recall what month that was in? A. No, I don't.

Q. Not at all? (1514) A. No.

Q. Do you recall whether it was in the first half of the year or the latter part of the year? A. There were a number of conversations. It wasn't just one. The one that I can more or less talk about would be probably some time in the latter part of the year. That one I can recall.

Q. There were a number of conversations with Mr. Stofsky? A. No. Oh, no, just one with Mr. Stofsky. Just one telephone call.

Q. That's the one I am asking about. I am asking about what month that conversation was in. A. I don't recall.

(1515) * * *

Q. Did you communicate personally to Mr. Jaffee that he was not going to be the person selected? A. No.

Q. Did you ever tell Mr. Jaffee of your conversation with Mr. Stofsky? A. No.

CHARLES HOFF, a defendant, called as a witness in his own behalf, being first duly sworn, testified as follows:

Direct Examination by Mr. Abramowitz:

(1517) * * *

Q. You are employed in the Furriers Joint Council, are you not? A. I am.

- Q. What job do you hold there? A. I am the assistant manager.
- Q. How long have you been the assistant manager? A. From about the latter part of 1962.
- Q. How long have you been a member of the union? A. I joined the union as a fur floor boy in 1937.
- Q. How long have you been in the fur trade? A. Since 1935 when I graduated high school.
- Q. Have you held any other positions in the union? A. Yes. I was a member of the executive board and a delegate to the Furriers Joint Council and I became a business agent in 1953.
- Q. How long did you serve as business agent? A. Until I was appointed and elected assistant manager in 1962.
 - Q. '62? A. Yes.
- Q. Is the post of assistant manager an elected position at the union? A. It is.
 (1518)
- Q. How often have you been elected as assistant manager? Approximately. A. Oh, at least four times that I can recall.
- Q. Can you describe to the Court and jury your duties as the assistant manager? A. Well, as assistant manager I am a member of the conference committee that negotiates all contracts. The conference committee in turn usually selects a subcommittee of two, three or four people to act on its behalf and I have been appointed to that subcommittee over the years.

In addition to that, I act as the union's advocate in the impartial machinery that we have for the industry. Our union practices a program of having its doors open to all workers that come in, and my door is open to the workers who come in to discuss problems or grievances or complaints. I do service a few shops in the industry.

In addition to that, I am one of the union trustees in the Health & Retirement Fund.

I also participate in all meetings that the union calls, whether they are meetings of a large or a small nature, and I assist, many times, the business agents with any special problems that they may have. I may even go with them, accompany them to a shop on a special problem. In addition to that we meet on occasion to discuss any (1519) special cases that come up before the impartial chairman.

I am also a member of the executive committee of the FCIA, which is the Fur Conservation Institute of America, the promotion agency in the industry.

Q. What do you mean when you say promotion agency? A. Well, this is an organization that has been in effect, oh, three or four years now, and on a voluntary basis collects funds from the employers in the industry to help promote furs throughout the country, and throughout the world, as a matter of fact. The program has been very successful. As a result of this program, the gross sales volumes of our industry have gone up.

Q. You mentioned gross sales. What is the dollar volume of sales made by the fur employers in the fur industry of Manhattan? Approximately.

Mr. Sabetta: What year are we talking about? Mr. Rooney: The present year, let's say.

A. In 1973, the dollar sales volume that was reported was \$400 million.

Q. Now, you mentioned in the description of your duties that you were assigned various shops. A. Yes.

Q. About how many shops were you assigned in your post as assistant manager? (1520) A. At the present time I have—I service four shops.

- Q. Four shops? A. Yes.
- Q. Now, do these four shops fall into any particular classification? A. Well, for example, the president of the Association Fur Manufacturers is a man named Oliver Gintel. I service that shop mainly because he is the president and it requires some special attention because of his position. I service another shop by the name of J. Winek & Son, which is one of the largest mink and sable manufacturers that we have in the industry, and has been for over 50 years. I also service the shop of Dan Grossman.

I service a shop called Newstatter that employs between 50 and 60 workers, because there, too, there are some special problems. I would say that the four shops that I service require special attention, and fortunately I have acquired the kind of experience that we need for these kind of problems.

- Q. Is it fair to say that in the union staff you are the most experienced man on the staff? A. I have the longest tenure of most of the business (1521) agents on the staff.
- Q. Now, directing your attention to 1969 and 1970, were you also assigned various shops? A. Yes. I may have had a few more shops at that time. I don't exactly recall how many.
- Q. Now, you deal with the Association; is that correct? A. I do.
- Q. It's the Association that represents the employers; is that right? A. Yes.
- Q. Now, the union has a staff of about 11 people; is that right? A. That's correct.
 - Q. Mr. Stofsky is the manager? A. Yes.
- Q. You are the assistant manager; is that right? A. There are two assistant managers.
- Q. Who is the other assistant manager? A. Oscar Ward.

- Q. Mr. Gold is the organizer; is that right? A. Yes.
- Q. There are how many business agents? A. Seven business agents.
 (1522)

Q. Seven; is that right? A. Yes.

Q. One of those business agents is Mr. Lageoles; is that right? A. Correct.

Q. Now, the Association also has a staff; is that right?

A. Yes, they do.

Q. About how many people in 1969 and 1970 were on their staff? A. Well, they had an executive vice-president, Mr. Greenberg; the manager of the labor department, who was Mr. Hecht at the time, and they had five labor adjusters.

Q. One of those labor adjusters was Jack Glasser? A.

Correct.

Q. By the way, is the job of a business agent a full-time job at the Furriers Council? A. It's more than a full-time job.

Q. Also do you remember when Mr. Greenberg, who was the executive vice-president of the Association, resigned?

A. He retired about the middle of 1972.

Q. Can you give us the month? A. I think it was in the month of June.

Mr. Rooney: May we have this marked as a (1523) defense exhibit, please, for identification.

(Defendants' Exhibit AB was marked for identification.)

Q. Mr. Hoff, I show you what has been marked Defendants' Exhibit AB for identification and I ask you if that document refreshes your recollection as to when Mr. Greenberg retired or resigned from the Association. A. Yes. I see it says retired on July 2, 1971.

Q. You mentioned the labor adjusters of the Association. Would you describe to the Court and jury what the duties of the labor adjusters of the Association were? A. Well, they accompany our business agents on a complaint to any of the employers that they service. During the discussion of the complaint—for example, if I may cite an example.

If the complaint deals with the discharge of a worker, the worker, the business agent and the labor adjuster would appear on the scene on the employer's premises to discuss the reason for the discharge, and in most instances we found, because this is a crucial issue to the union, that we have been able to convince many times the labor adjuster that the discharge was improperly made and the reinstatement would take place, or could take place on the spot without (1524) appearing before the impartial chairman.

Now, if there was a dispute, then, of course, that matter would be held over until it could appear before the impartial chairman. If it was any other matter, if it was an investigation of some kind relating to a worker's holiday pay or vacation pay that was improperly paid, or that may not have been paid, then, of course, the adjustment is made on the scene after the books are examined.

The payroll record would be looked into and so on. So, the adjustment of the complaint could take place right in the shop where the labor adjuster and the union representative would agree in writing to the disposition of that particular matter and the employer would be directed to comply with their decision, or with their agreement.

Q. Now, we have heard talk about the impartial chairman. Who is the impartial chairman? A. Our present impartial chairman is a man named I. Robert Feinberg, who is an attorney of long standing and has been a labor mediator for many years and is a member of the Guggenheimer & Untermyer law firm.

Prior to Mr. Feinberg, who came in, I believe, in 1968, into our industry, we had a man by the name of Charles Ballon as the impartial chairman for ten years. Mr. Ballon is a recognized authority in our industry (1525) because he had been previously connected with it in some form before he became impartial chairman. He is a member of the law firm where Louis Nizer is a partner. Prior to that we had a man named Irwin Shapiro, who is now a State Supreme Court Justice. Prior to Mr. Shapiro we had a man named Louis Lowe, who was the president of our Association in New York and also the attorney for the New York Times.

Q. Now, is the position of impartial chairman an appointed or elected position? A. No. This is a selected position, selected by both the union and the Association and paid by both sides.

- Q. What does the impartial chairman do? A. Well, his time is limited. He meets a maximum of once a week. There are many times during the course of any impartial chairman's tenure when he would not be available, sometimes for personal reasons of health and sometimes because he had other matters that took him away from the one day a week meeting. He decides whatever disputes or controversies may occur and he is the final word. There are no appeals from his decision, except, or course, in a court action.
- Q. Mr. Hoff, let me show you Government's Exhibit (1526) in evidence 1 and 2. They both collective bargaining agreements. Government's Exhibit 1 goes from 1965 to 1969; is that correct? A. Yes, it does.
- Q. Government's Exhibit 2 goes from '69 to '72; is that also correct? A. Correct.
- Q. Mr. Hoff, we have heard a lot about contracting, what are the penalties under the collective bargaining agreements for contracting? Would you direct your atten-

tion first to the period of 1965 to 1969 with respect to contracting. A. In his contract, if a firm—

Q. You are referring to Government's Exhibit 1? A. 1965 to 1969. If a firm were found guilty of an isolated instance of contracting or a minor transaction of contracting, he could be penalized a maximum of \$1000. In most instances that came before the impartial chairman, where he made the decision—

Mr. Sabetta: Your Honor, I am going to object to this as not responsive. It asks for what the penalties were on the contract.

(1527)

The Court: Sustained.

- Q. During 1965 to 1969, you appeared before the impartial chairman on several occasions; is that correct? A. I did.
- Q. And several of the matters during that period that he had to decide involved contracting; is that correct? A. It did.
- Q. Were you physically at those meetings or sessions before the impartial chairman? A. Correct.
- Q. Now, can you tell us what most of the fines that were levied by the impartial chairman were during that period? A. They were less than \$1000.
- Q. Were there any other penalties for contracting under this particular agreement? A. Yes. If a firm has been found to have engaged in contracting over a period of time repeatedly, even though he may have been caught once, the penalty is suspension from the collective labor agreement. There is a two-week hiatus between the finding of a guilty and the decision by the union of what to do with the suspension.

(1528)

Now, after the two-week period, or 15-day period, if the union decides to put the firm on strike, it has the right to have such a strike for a maximum of three months. There may have been one instance during the life of the contracts since I am in the union that there was such a strike for such a long time, but in most cases strikes are of short duration, and the settlement of the strike would have to take into account the labor cost involved in the contracting that was given out by the employer so that there would be a penalty that would take that into account in the settlement of it, and in addition to that, the main thrust of the union would be to place additional workers on the job in order to act as a deterrent against future contracting.

Q. Now, would you direct your attention to Government's Exhibit 2 in evidence, the agreement covering the years 1969 to 1972. What were the penalties for contracting under this agreement? A. They were the same as the previous agreement.

Q. Now, we have also heard testimony about jobbing. Do you recall that? A. Yes.

Q. Would you describe what jobbing is? A. Well, jobbing is the purchase of ready-made (1529) garments by a manufacturer or any employer in the industry, and where he acts as a middleman to resell that product; that garment that he buys from a union shop to his customer, that actually constitutes what a jobbing operation is.

Q. Now, jobbing is covered by your collective agreements with the Association, is it not? A. It is.

Q. In some senses it's permitted; is that correct? A. Yes.

Q. But in some senses it's not permitted; is that correct? A. There are several categories or rules related to the regulation of jobbing.

Q. Would you tell us what those are. A. In Exhibit No. 1, from 1965 to 1969, one of the regulations required was that an employer could only buy garments of the line that he produces in his own factory if his employees were working full time. That was one of the regulations in the contract. In addition that that, the other main regulation is that he had to buy these garments from union shops, but the agreement uses other language. If I may, I would like to read it. This is on page 18, No. 16: (1530)

"The purchase of any merchandise shall only be from sources whose workers work under the terms and conditions prevailing in the industry," which in effect means from union shops only. So, these were the two conditions, or main conditions for jobbing. A violation of these conditions could result in sanctions that the agreement called for.

- Q. Now, if an employer, for instance, purchased from a non-union shop goods, that would be a violation; is that correct? A. It would.
- Q. Would you tell us what the penalties under Government's Exhibit 1 were for this type of jobbing? A. On page 34, 2-E. The penalty for non-union shop jobbing for the first offense is \$300. For the second offense it says, "Sanctions set forth in Article 16, Section 7," which relates to the contracting clause, the provision against contracting in the agreement, and that would suspension from the collective labor contract.
- Q. Were there any other penalties for jobbing under this agreement? A. Just those two. There is another penalty for buying garments during day work, and the violation here in (1531) the same clause calls for \$150 penalty for the first offense and \$300 for the second offense.
- Q. Would you direct your attention now, please, to Government's Exhibit 2. A. I am looking at it.
 - Q. Would you tell us what the penalties under that

agreement for 1969 to 1972 were for jobbing? A. For the violation of buying fur garments on the line—while the shop is on day work, the penalty is \$150 the first time and the second time \$300. It is the same as the previous contract.

Q. How about for non-union jobbing? A. There is a change here that says \$300 for the first offense—this is on page 9 in the first section—and for the second offense \$1000 and/or suspension for subsequent offenses. This is the way it reads.

Q. So, for a first offense for non-union jobbing, the fine is a penalty of up to \$300; is that correct? A. Correct.

Q. Is this fine or figure of \$300 at all dependent upon the volume of jobbing? A. Yes. As a matter of fact, we have had—from my experience we have had many cases where a firm that buys from non-union sources, and the union proves (1532) the complaint, brings it before the impartial chairman where the ruling has been that the firm was given a warning and there was no monetary fine at all because the ruling related to the amount of jobbing that was done totally as against the percentage of non-union purchases.

Q. So, the total volume, really, has nothing to do with the penalty; is that what your testimony is? A. The total volume has—it does have something to do with the penalty, but where there is—for example, we have a case that we can cite where a firm purchased over \$700,000 worth of ready-made garments, but only a fraction, or about 10 per certs from non-union sources. The impartial chairman merely says that the firm shouldn't do it again and he placed no penalty on it.

Q. But the maximum penalty, regardless of the volume of non-volume, would still be \$300; is that correct? A. That's correct.

Q. Now, in all your experience, has any firm or em-

ployer been suspended for jobbing or buying garments from a non-union source? A. Never.

Q. What is the reason for this?

Mr. Sabetta: I object to this, your Honor, if (1533) he is asking him to relate what was on the mind of the impartial chairman.

The Court: Sustained.

Q. Does the union have a position with respect to nonanion jobbing and the penalties therefor? A. We know that a change took place with the passage of the Landrum-Griffin law in 1959, where the language of the contract had to be changed. Prior to 1959 it said in the agreement any purchases that were from non-union sources or non-union shops were prohibited. Now we say, from my reading the contract from Exhibit 1—And I would like to read that, if I may.

> "Purchase of any merchandise shall only be from sources whose workers work under the terms and conditions prevailing in the industry."

We have never wanted to have this section tested in the court, and we are very careful with its application.

- Q. The reason for that is? A. We are not sure whether this could be charged as an unfair labor practice.
- Q. Have you been so advised by your attorneys for the union? A. Yes, we have.
 (1534)
- Q. Now, directing your attention to October, 1969, did you have occasion to go to California on union business at that time? A. I did.
- Q. Did any other men from the union go with you? A. Yes, I went to California that month for a period of a week with Mr. Schifrin of the union, and the purpose of

our visit was to visit the large department stores and retail organizations that handle fur products and try to convince them to continue to buy the American products, rather than anything from any other country, any imported item. During the course of that visit in the City of Los Angeles we ran across a jobbing firm that was buying garments from a New York outfit by the name of Animal Crackers, and when we returned to the city we decided to find out who Animal Crackers really was, because we had never heard of that name before, and we discovered that this was another selling name for the firm of Daniel Furs.

And I asked Mr. Schifrin to take the business agent who was new at that time on the job and make an investigation of Daniel Furs.

Q. To your knowledge did he make such an investigation? A. He did.

Q. Did that culminate in the filing of a complaint (1535) on October 21, 1969? A. It did.

Q. Let me show you Government's Exhibit 15 in evidence. I direct your attention to this document. A. I have it.

Q. The employer at this firm of Daniel Furs was who? A. Mr. Ginsberg.

Q. At this time, October 21, 1969, Mr. Schifrin discovered contracting at Ginsberg's, according to this exhibit? A. Yes, he discovered in the cash book an item, reading from this exhibit, that the firm did business with Irving Chaiken, who we know is a finishing contractor, and the amount of labor involved was \$179.

The Court: What exhibit is that?

Mr. Rooney: Government's Exhibit 15, your Honor.

Q. Mr. Hoff, also directing your attention to this exhibit, Mr. Schifrin also found certain jobbing from non-union sources?

Mr. Sabetta: I object to leading.

Mr. Rooney: It is in evidence. I am just describing the exhibit.

Mr. Sabetta: He is characterizing the contents of the exhibit.

(1536)

The Court: Sustained.

Q. Was any jobbing found by Mr. Schifrin? A. Yes.

Q. How much? A. Non-union jobbing from two firms, Waxman and Royal Fashion.

Q. How much in dollar amount approximately was the jobbing? A. I don't see all the figures, but I recall it was about \$22,000 worth of non-union jobbing.

Q. This was purchases from non-union sources of garments? Is that right? A. Yes.

Q. Was this complaint prosecuted by the union? A. It was never brought before the impartial chairman.

Q. What was the reason for that? A. Well, in investigating the shop Mr. Schifrin brought back the information that the firm had increased the size of its factory substantially within the two year period.

Mr. Sabetta: I am going to object to this because it is hearsay, apparently what Mr. Schifrin told him.

The Court: Sustained.

(1537)

Q. Are you familiar with the complaint that was filed, Mr. Hoff? A. I am.

Q. Are you familiar with the investigation that was made of Daniel Furs in this instance? A. I am. As a matter of fact, I helped initiate this complaint.

Q. You are familiar with the reasons why this complaint was not prosecuted? A. I am, because it was discussed with me.

Q. What were those reasons?

The Court: Discussed with whom?

The Witness: Mr. Schiffin and myself, your Honor.

This firm was a manufacturer of rabbit garments and he had increased the size of his factory within a two-year period. As a matter of fact, he had taken an additional loss because he had no room for all these workers in his original factory, and he now employed between 20 and 30 workers.

But in 1969 he told the committee that was investigating that he intended to go out of the rabbit line at the beginning of 1970, so we decided to wait and see what happened in the beginning of 1970 with this company and see what other items it would manufacture in place of rabbits (1538) and from what I recall when the union process a complaint on behalf of a nailer in the shop in 1970, there is a ruling pertaining to the discontinuance of rabbits in this shop.

Q. Were there any other reasons? A. Well, we had to proceed in our opinion cautiously because we did not want to lose any more workers' jobs in this shop with the discontinuance of its major item, which was rabbits, and the bringing in of other lines.

Q. Do you recall what the approximate volume of business that Daniel Furs was doing during this period? A. I think about 500,000.

Q. And the jobbing from non-union sources amounted to what? A. Amounted to \$22,000.

Q. And the contracting amounted to? A. \$179.

(1542) * * *

- Q. During the early part of 1976 did Mr. Ginsberg discharge any union workers? A. He was able to sever a worker named Zamor from the job because of the changing of the line of work.
- Q. As a result of his changing of his line of work did he sever any other workers? A. He tried as a result of the change of work not to give work to an operator named Branin, and the union processed the complaint and we were able to convince the firm that Branin should be given an opportunity to work on new items and we were able to save his job, and the saving of his job was an exchange for not processing the complaint for the \$179 worth of contracting.

(1544) * * *

- Q. Mr. Hoff, do you know a man by the name of Jack Glasser? A. Yes.
- Q. When did you first meet Jack Glasser approximately? A. About 1956 or '7.
- Q. Now, in 1967 was Jack Glasser employed as a labor adjuster by the association? A. Yes.
- Q. You heard Mr. Glasser testify that on a number of occasions in 1969 he gave you money. Did you receive any money from Jack Glasser in '69 or any other year? A. I never received any money from Jack Glasser at any time for any reason whatsoever.
- Q. Directing your attention to 1969 did you ever visit Sherman Bros. with Mr. Glasser? A. I never visited Sherman Bros.
- Q. Did you ever speak with Mr. Glasser in 1969 about going to Sherman Bros.? A. No.
- Q. Did you ever visit Chateau Creations, Mr. Hessel's shop, with Mr. Glasser in 1969? A. No.
 - Q. Did you ever speak with Mr. Glasser in 1969 about

(1545) Chateau Creations? A. No, and he never spoke to me about them.

Q. How about with respect to Breslin Baker, did you ever visit Breslin Baker with Mr. Glasser in 1969? A. I did not.

Q. Did you ever speak to Mr. Glasser in 1969 about Breslin Baker? A. I did not.

Q. Or with respect to Mr. Schwartzbaum, did you ever visit his shop with Mr. Glasser in 1969? A. No, I have not, and, as a matter of fact, I never visited Schwartz-

baum, either.

Q. By the way, Schwartzbaum was on strike, was he not, in 1969? A. Yes, in about May, 1969, we conducted a campaign against imports in our industry, not the entire industry, but some selected shops, manufacturers, jobbers and retailers. Schwartzbaum was one of those that we picketed. I believe we picketed the Schwartzbaum shop for one day and collected loss of time for the workers in the shop.

Mr. Rooney: I would like the record to reflect that I am showing Mr. Hoff Defendants' Exhibit G for identification.

Q. I will ask you if you can identify that exhibit (1546) for identification. A. Yes, I can identify it.

Q. What do you identify it as? A. These are papers that were given to me personally by Jack Glasser, and Mr. Glasser told me that these were photostats of a diary kept in Mr. Hecht's Grawer, that he removed from that drawer during the period from 1967 to 1969. I believe the last entry is November, 1969. And he had told me that either he received a duplicate of the key to Mr. Hecht's desk or he made a duplicate of the key, and periodically he would remove the book, the diary book, have it

photostated, and replace it the following morning in the desk.

- Q. Now, when you received these, did you receive Government's Exhibit G, all the papers at one time? A. No, they were given to me a few pages at a time over this period of approximately a three-year period.
- Q. I think I refer to it as Government's Exhibit G. It is Defense Exhibit G for identification. A. Yes.
- Q. Now, when you received these papers what did you do with them? Where did you put them? A. I took them with me to the union and kept them in a locked file. (1547)
- Q. Did there come a time when you removed these pages which are embodied in Defendants' Exhibit G for identification? Did you remove them? A. At one time I removed them and gave them to Mr. Abramowitz.
- Q. Do you recall about when that was? A. When he became one of our attorneys.

(1550) * * *

- Q. Mr. Hoff, did you pay Mr. Glasser any moneys for these documents which are embodied now in Defendants' Exhibit G? A. From time to time I gave Mr. Glasser \$20, \$15, \$25. I even paid him the dollar and change or the two dollars that it cost for the photostat.
- Q. By the way, did the union have a Xerox machine in the union headquarters between the years '67 and '69? A. It did not.
- Q. Who else at the union knew that Mr. Glasser had given you these documents, to your knowledge? A. The only one that knew was Mr. Stofsky.
- Q. Did you receive any other information from other sources during these years, '67, '68, '69 and '70? A. Occasionally Mr. Glasser would report to me about his eaves-

dropping on the telephone conversations by Mr. Greenberg, who was the executive vice-president of the Association

during those years.

Q. How about from any other people aside from Mr. Glasser, did you receive any of their information during those years '67 through '70, let's say? A. Well, we made it a practice to cultivate certain sources of information regarding contracting or regarding any other specific items. We would go to—occasionally an employer would give us information, an elevator operator, truckdriver, a contractor might give us information about another contractor. We had to develop these resources in order to do whatever that we could to maintain our contract in our conditions for the numbers of our union.

Q. Mr. Hoff, toward the end of December of 1970, Mr. Glasser was fired: was he not? A. He was.

- Q. Now, in the fall of '70, did you have occasion to meet with Mr. Glasser? A. Yes.
- Q. And do you recall when that was, approximately? A. Some time in the latter part of October 1970.
- Q. Do you recall where you met Mr. Glasser on that occasion? A. Mr. Glasser called me on the phone in the union and asked to come to see me and I invited him to come to my office.

(1553)

- Q. Did he in fact come to your office? A. He did.
- Q. Did you have a conversation with him? A. Yes, I did.
- Q. Would you relate the details of that conversation. A. He came into my office and I invited him to sit at the desk. Mr. Glasser then proceeded to tell me what he considered this major problem, or his major concern; that after he was discharged from the Association he was told by the heads of the Association that he would not be able to receive his Association pension. They did offer him the option, he said, to retain his own investment, which

was approximately, from what I can recall, about \$5,000, but they made it emphatically clear that his pension he would not get.

Mr. Glasser told me he was not 65 yet, he could not get Social Security at that time and neither could he get the industry pension, because he was not 65, and that he had financial difficulties. He had family problems. me that he and his wife had separated during that time. As a matter of fact, I became embarrassed because he became highly emotional and even broke down. time I closed the door to my office and I waited until (1554) Mr. Glasser composed himself. When he did, when he was fully composed, he took a different tact completely. He told me that unless I personally helped him get his pension, his Associated pension, that he would go to the heads of the Association and tell them that he had given me these documents and other information as the phone conversation that he eavesdropped on and embarrass and try to disrupt the relationship that the union had and the relationship Mr. Stofsky and myself had with the heads of the Association. At that point I said to him the only thing I knew or I could offer a suggestion for help to get his Associated pension would be that he go to an attorney, at which point-

Q. Let me interrupt you there, Mr. Hoff. We have heard testimony about two pensions. You recall that? A. Yes.

Q. There was testimony about a fur industry pension. Do you recall that? A. Yes.

Q. Now, is this a pension that you were talking about? A. No. The fur industry pension had nothing to do with it. This was a pension within the Association for the employees 67 the Association which they contributed (1555) for and their employer, the Associated Fur Manufacturers made a contribution to. I don't know what the pension amounted

to or what the amount of contribution was, but this is what he was talking about.

Q. You suggested to Mr. Glasser that he get a lawyer;

is that right? A. Yes.

Q. Was there anything else in this conversation before I interrputed you? A. Mr. Glasser demanded from me that I help get him the attorney because as he said, he doesn't know any attorneys.

Q. Did you try to get an attorney for him? A. I did. I contacted a friend of mine who recommended Mr. Anolik.

Q. To your knowledge, by the way, did Mr. Glasser keep a copy of Defendants' Exhibit G? A. I believe he did.

The Court: Let me interrupt and say that Exhibit G has been received not for the truth of what may be asserted in it, but it is received as evidence offered to prove the possession of the papers by Mr. Glasser and his delivery of them to this witness. Was that your offer?

(1556)

Mr. Rooney: Yes, your Honor.

The Court: All right.

A. If I may, Mr. Rooney, on your last question, I recall that Mr. Glasser told me that he had a copy of it and that he would prove to the leadership of the Association, namely Mr. Greenberg and Mr. Hecht, that this was a copy of what he had given to me over the years.

Q. Did you later contact Mr. Anolik? A. I did. I made an appointment for Mr. Glasser and myself in the early part of November of 1970 and I met Mr. Glasser at

that building where his office is located.

Q. Did you go up to see Mr. Anolik with Mr. Glasser?

A. I did. As a matter of fact, before we came into Mr. Anolik's office, Glasser requested from we, because he said he did not think he was capable of relating the subject

matter that he—that he was emotionally distraught. He asked me to relate the problem and that he would fill in any of the gaps that I was not familiar with.

- Q. Did you do that when you went up to Mr. Anolik's office and meet with him? A. I did.
- Q. Would you describe that meeting, please. (1557) A. I outlined Mr. Glasser's problem to Mr. Anolik and Glasser filled in. He did not have a copy of the pension agreement with the Associated with him at that time. This is one of the things that Mr. Anolik asked to look at. Mr. Anolik said to Mr. Glasser that until he sees that agreement, he can only suggest that he would write a letter on Glasser's behalf to the Association, or to the Association's lawyer, and that we should return in a few months. Then he also told us that his fee would be, if he was successful, \$2000, and that he wanted \$500 down. Then we left.
- Q. Did there come a time when you went to see Mr. Anolik again? A. Yes, we saw him again. From what I recall, I think it was in the beginning of February of the following year, '71.
- Q. Did you go with Mr. Glasser to see Mr. Anolik? A. Yes. I went with him.
- Q. Would you describe that meeting. A. Glasser had brought his pension agreement with him, and as soon as they got into the details of the agreement, I excused myself and I left.
- Q. Did you see Mr. Glasser after that? (1558) A. No. I didn't see Mr. Glasser until this court appearance.
- Q. By the way, did you tell Mr. Stofsky that you were going to see Mr. Anolik? A. I did not.
- Q. To your knowledge, did he know that? A. He didn't it from me.
- Q. Did you ever pay Mr. Anolik \$500 on behalf of Mr. Glasser? A. I did not.

- Q. Did the union? A. The union never paid Mr. Anolik.
 - Q. Do you have a checking account? A. I do.
- Q. In what bank? A. In 1970 and 1971 it was with the First National City Bank.

(1560) * * *

Q. Did you locate any check in the amount of \$500 payable to Mr. Anolik as a result of that—— A. No, there was no such check.

(1564) * * *

Q. Let the record reflect that I am showing Mr. Hoff AH for identification and asking him if he can identify the items attached to AH for identification. A. These are statements from—all from Manufacturers Hanover Trust Company made out to the Furriers Joint Council for other accounts. One is the Unemployed Aid Fund, and there are no transactions on this for the period January 29, 1971 through February 26, 1971.

The next account is called Greek Fur Workers Special Fund for the same period, January 29 through February 26, 1971, and no transactions on that statement, and the third account is called Emergency Sick Fund. There are a few transactions on this for \$50, \$50, \$50 and \$107.50 from February 3 to February 5, 1971. There are some checks attached from the Emergency Sick Fund. None of them were for Jack Glasser.

Q. Or Mr. Anolik; is that correct? (1567) A. Or Mr. Anolik.

(1569) * * *

Q. To your knowledge, Mr. Hoff, did the union ever pay this \$500 to Mr. Anolik? A. The union did not pay.

Q. Do you recall Mr. Anolik's testimony? A. Will you refresh my memory, please?

- Q. Well, do you recall his testimony with respect to receiving a check? A. Yes. I heard him say that he received a check.
- Q. Did you ever see Mr. Glasser after the second meeting with Mr. Anolik about February of '71? A. I did not see Mr. Glasser after that until his appearance in court.
- Q. Directing your attention to the latter part of (1570) March and the early part of April in 1972—— A. Yes.
- Q. Will you tell us were you were then? A. I was in Florida for one week.
- Q. Do you know a man by the name of Daniel Grossman? A. Yes.
- Q. When was it that you first met Mr. Grossman? A. Well, I became acquainted with the Grossman Company in 1965 when he joined the Associated Fur Manufacturers. At that time Mr. Grossman's father, Harry Grossman, seemed to have been the senior member of the firm because whenever the union and the Association came into the premises of the Grossman Company, we dealt with Harry Grossman and this went on for a number of years and during the course of time I met his son, the one who appeared in court, Daniel Grossman. (1571)
- Q. You are the business agent at Daniel Grossman's shop? A. I was the business agent and still am the business agent of that shop from the time he joined the Associated Fur Manufacturers in about March, 1965.
- Q. Now, in March of 1965 when he joined did you have any discussions with Mr. Grossman? A. Yes. I would like to take a step back, if I may. First we had a discussion about the discussion with Mr. Greenberg, the head of the association, upon Mr. Grossman's application for membership in this organization. This was right after or several weeks, I should say—

The Court: Just a moment. Counselor, will you put the questions?

Q. Mr. Hoff, did you speak to Mr. Greenberg before Mr. Grossman applied for membership in the association? A. Right after he applied Mr. Greenberg and I had a discussion.

Q. About when was this? A. This was about March

of '65.

Q. What was that discussion?

Mr. Sabetta: I object to that. The Court: Sustained.

Q. What did you say to Mr. Hecht or Mr. Greenberg (1572) in that discussion? A. I said to Mr. Greenberg that as he knew——

Q. Don't tell us what Mr. Greenberg said. A. I said that the Grossman firm was a firm with a lot of problems, because during the period between 1958 or prior to 1958 this was a non-union shop for about 25 years, and in 1958 our union conducted a massive organization drive and a strike with the Grossman firm. This was the first attempt of the union to organize Grossman. This was after several attempts—

Mr. Sabetta: I object, unless it is related to Mr. Greenberg on this date. It seems to me we're getting hysterical analysis.

Q. Is that what you said to Mr. Greenberg? A. Yes.

The Court: Overruled.

A. (Continuing) And only after a massive campaign in 1958 with countrywide publicity—

The Court: This is you talking to Mr. Greenberg? The Witness: Yes, sir, yes, your Honor.

Q. Would you continue with that conversation? A. I said to Mr. Greenberg that we finally signed a contract with Mr. Grossman in 1958 providing for a fur (1573) factory to be opened under union conditions in the beginning of 1959, and from the period from 1959 through 1964 our union suffered many problems with it; we had strikes; we had the impartial chairman's arbitrations when he was a member of United Fur Manufacturers; it was a union shop with a very small factory from the period from 1959 through 1964. And when he became a member of the association in 1965. the early part of March of that year, I said to Mr. Greenberg the union insisted that he should employ additional workers, and the answer to the investigation of the application for membership show that the association and Mr. Harry Grossman and the union was committed that this firm would employ an additional amount of workers, between four and six workers, after a reasonable period of time elapsed.

Q. Now, Mr. Grossman subsequently agreed to employ four to six workers? A. Only after the union went up there continuously and finally brought him before the impartial machinery.

Q. Well, directing your attention to on or about March or April, 1965, did Mr. Grossman during that period agree to employ these additional unions workers? A. He did not.

Q. When did he? A. I would like to refer to some notes, if I may.
(1574)

Mr. Rooney: With the Court's permission, your Honor.

The Court: All right.

Mr. Rooney: May we mark those for identifica-

May these be marked as a defense exhibit for identification, please?

(Defendants' Exhibit AJ marked for identification.)

Mr. Rooney: May Mr. Hoff refer to his notes, your Honor, AJ?

The Court: You wish to use those to refresh your recollection?

The Witness: That is correct.

The Court: Why don't you take a moment and scan them and see if your recollection is refreshed?

The Witness: Yes.

O. The question is about when did l

Q. The question is about when did Mr. Grossman agree to hire these additional workers? A. Well, he had agreed that he would hire them after a reasonable time elapsed in March, 1965.

Q. Did there come a time when he, in fact, Mr. Grossman, in fact, hired these four to six additional workers?

A. Yes, if I may——

The Court: Is that in your handwriting? The Witness: Yes.

(1575)

The Court: All right. Go ahead.

Q. Just tell us when the time came. A. He hired additional workers beginning—well, there are various times—

Q. Mr. Hoff, bear an interruption. Did there come a time—forget your notes for a second—when Mr. Grossman hired the additional four to six workers that he said he would hire in March, '65? A. He hired some additional workers in 1966, but by the end of '66 those workers left the job, so that in the beginning of 1967 we were back to the old figure that we started with, and the union then went before the impartial chairman—

Mr. Sabetta: Again I must object, because the answer is going far beyond the question asked.

Mr. Rooney: I will put another question, with your Honor's permission.

- Q. Did there come a time when this matter was presented to the impartial chairman? A. There was such a time.
- Q. Do you recall when that was? A. I believe it was in January of '67.
- Q. Did the impartial chairman to your knowledge render a decision at or about that time? (1576) A. He did.

(1577)

- Q. Now, when the impartial chairman rendered his decision in January, 1967, did he fine Mr. Grossman? A. He said he would fine Mr. Grossman \$2,000 unless he would add the amount of workers that were formerly agreed to in 1965.
- Q. Did there come a time subsequently when Mr. Grossman, in fact, hired these additional workers, four to six? A. He did.
- Q. You were the business agent during what years, Mr. Hoff? A. I am still the business agent of that shop.
- Q. When did you first become business agent of that firm? A. On its application for membership in the Associated Fur Manufacturers in 1965.
- Q. You heard all the testimony, have you not, about the contracting Mr. Grossman was engaging in? A. I have.
- Q. How was it as business agent you did not catch Mr. Grossman?

Mr. Sabetta: I object to the form. The Court: Sustained as to form.

Q. During this period when you were the business agent (1578) Mr. Hoff, were you aware that Mr. Grossman was engaging in contracting? A. We tried to become aware.

Q. Were you aware? A. I was aware of it in 1968 when

we caught Mr. Grossman giving out contracting.

Q. Do you recall how many complaints were filed against Mr. Grossman for contracting? A. There were a number of complaints filed.

Q. Do you recall the years? A. I would have to search my memory and look at a document which I don't have with me, but there were over the years from 1965 on the union processed several complaints against Mr. Grossman for contracting.

Q. Were they prosecuted successfully, those complaints? A. Well, when we filed a complaint for contracting the union had the right to look at some books, depending on the contract. For example, in the agreement from 1965 to 1969, we were limited on the type of books or the kind of books we could look at. If I would look at the exhibit in front of me I could tell you which books we were permitted to look at during that contract.

Q. With the court's permission would you look at that and tell us what that is? Is that 1 in evidence? (1579) A. This is number 1.

Q. Government's Exhibit 1. A. This is on page 27, number 5, under the clause relating to the prohibition on contracting, it gives the union the right to examine payroll, shipping, sales, purchase and production records, and then the impartial chairman had the authority to direct the investigation of any other books and records. Now, when we came up to the Grossman shop during this period between 1965 and 1969 we know of one firm, Harry Grossman Furs, Inc. We did not know of the existence of any other shop.

Q. Did you know of the existence of DBG? A. As a matter of fact, we knew that DBG, according to Mr. Grossman, and I heard his testimony in court—that it was engaged

in real estate ventures. So we didn't have the opportunity to examine DBG, because he told us it was located at his home address, not at 323 Seventh Avenue, where his business was located.

- Q. Well, you were aware of these other corporations that Mr. Grossman testified about? A. We are aware of them now. As a matter of fact, I would like to relate some information we have about those corporations.

 (1580)
- Q. Which corporations are you referring to? A. DBG, for example.
- Q. What period are you talking about? A. Talking about the period 1971.
- Q. Are you referring to Government's Exhibits in evidence? A. Yes, I am, the books that were given by the government which we had an opportunity to inspect.
- Q. And you have inspected those books during the course of this trial? A. We have.
- Q. What has your inspection disclosed? A. If the court would allow, I would like to refer to my notes.
 - Q. Are these additional notes? A. Yes.

Mr. Rooney: Let's mark them, too.

The Court: Are they in your handwriting?

The Witness: They are. That is related to DBG. (Defendant's Exhibit AK marked for identification.)

The Court: Do you wish to use these to refresh your recollection?

The Witness: I would like to. It is the report on our investigation, if I may, your Honor.

(1581)

The Court: Why don't you explore his use of those notes?

- Q. Would you examine AK for identification? A. Yes.
- Q. Those are your notes, those two sheets of paper, are they not? A. That is correct.

Q. And these notes were prepared as a result of an analysis that you made of Government Exhibits—

Mr. Sabetta: 37 and 38.

- Q. -37 and 38 in evidence? Is that correct? A. Yes.
- Q. Which company are you referring to in your testimony? A. Dan Grossman Fur Division Richton International.
- Q. And these are records that you obtained from the government? Is that correct? A. Yes.
- Q. You never saw these records before this trial? A. I did not.
- Q. What did your inspection disclose? A. It shows that beginning from March 1, 1971, through December 30, 1971—I have not counted the amount of entries—but innumerable entries during that period, (1582) that the DBG Trading Corporation bought skins, fur skins, amounting to \$17,043.18, and sold those skins to Dan Grossman Fur Division Richton Corporation, and also that this same company, DBG Trading, purchased garments for a total of 12,524 during this same period, for a total of both skin and garment purchases of \$29,567.18. In addition to that, Mr. Rooney, what is also interesting—and this information I just referred to came from the purchase record of the government book, the one that they put in evidence—

Mr. Sabetta: Which of the two are we talking about?

The Witness: Dan Grossman Fur Division Richton International.

Q. Are you referring to Government's Exhibit 37 or 38 in evidence? A. It is not this book; it is the other.

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(1587) * * *

- Q. Mr. Hoff, in 1965 Mr. Grossman was operating under what name? A. Harry & Dan Grossman.
 - Q. Harry & Dan Grossman? A. Yes.
- Q. Was this the company that he was under contract to the union with? A. It was.
- Q. Did you examine the books and records of Harry & Dan Grossman during the period of '65 to '71? A. We did.
- Q. Did those examinations disclose any contracting?

 A. It did not.
 - Q. Keep your voice up, please. A. It did not.
- Q. During this period of '65 to '71, did Mr. Grossman have any other companies? (1588) A. He did.
- Q. Do you recall about how many, approximately? A. About 10 or 11.
- Q. Can you give us the name of one of them? A. Jo Copland.
 - Q. Jo Copland? A. Yes.
- Q. Did you speak to Mr. Grossman about the Jo Copland Company during the period '65 to '71? A. I did.
- Q. What did Mr. Grossman say about this Company? A. He said it was a design name.
- Q. Did you seek to examine the books and records of his company? A. We asked for the books and records and he told us there weren't any.
- Q. Do you recall the names of any other companies? A. Yes.
- Q. Give us a name, please. A. He used the name Furs for Shakalis.
- Q. Did you speak to Mr. Grossman about Furs by Shakalis? A. I did.
- Q. What did he say? (1589) A. At that time Mr. Shakalis was his foreman and he told us that one of the conditions that Mr. Shakalis had him agree to was that

he would be able to use that name in order to attract his retail trade.

Q. Did you try to examine the books and records of that company? A. According to Mr. Grossman there weren't any books and records of Furs by Shakalis.

Q. Do you recall the name of another company? A. There was a company called Halston.

Q. Did you speak to Mr. Grossman during this period about Halston? A. Again, Halston is a well known American designer on ladies' apparel. According to Mr. Grossman's explanation, he said there were no books of Halston.

O. Can you recall the names of any of his other companies? A. Oscar de la Renta.

Q. Did you speak to Mr. Grossman during the period of '65 to '71 about Oscar de la Renta? A. Not at that time about Oscar de la Renta. We learned about that, if I may continue—

Q. Excuse me, Mr. Hoff. (1590) Did there come a time that you learned about Oscar de la Renta? A. Yes, there was.

Q. When was that? A. That was in 1973.

Q. In May of 1973 was a complaint filed against Mr. Grossman for contracting? A. There was.

Q. Was that a catch? A. Yes, it was.

Q. Could you describe that incident? A. Yes. Two business agents from the union, Mr. Shifrin and Mr. Mc-Ginsky, caught a delivery man from a finishing contractor to make me a delivery of two garments to Grossman in a box.

Q. Now, he was charged with contracting, was he not, for this? A. He was.

Q. As a result of that, did you try to look at his books and records? A. We did.

Q. Did you finally obtain those books and records? A. Yes, we did.

- Q. About how long did it take you? (1591) A. It took us about four months.
- Q. Did you have to go to court to obtain those books and records? A. We had to appear—we had our attorney appear in Federal Court.
- Q. Did you go before the impartial chairman on that occasion? A. We did.
- Q. What was his decision? A. He gave us an order for all books and records which was refused by Mr. Grossman, so that's why we had to go to court.
- Q. There came a time about four months later when Mr. Grossman produced those books; is that right? A. That's right.
 - Q. You examined those books, did you? A. Yes.
- Q. What did your examination disclose? A. It disclosed that there were approximately 37 counts of contracting on his books. Not only the books of the Grossman firm, but also the books of Oscar de la Renta.
- Q. Was Mr. Grossman charged with contracting for these 37 instances? (1592) A. He was.
 - Q. Did he receive a penalty? A. Yes.
- Q. Do you recall what that penalty was? A. He was suspended from the collective labor agreement by the impartial chairman.
- Q. This was as a result of the complaint for contracting being filed on May 1; is that right? A. Yes.
 - Q. In 1973? A. Yes.
- Q. Do you recall approximately what month he was suspended? A. I think it was in October.
 - Q. Of 1973? A. Yes.
- Q. Now, we have mentioned two exhibits, Government's Exhibits 37 and 38. Will you just look at those for a moment.

Mr. Rooney: Let the record show that I am showing Mr. Hoff Government's Exhibits 37 and 38 in evidence.

A. Yes.

- Q. When for the first time did you see those exhibits? (1593) A. We never saw No. 38 until it was in court.
- Q. How about No. 37? A. May I look at this once more?
- Q. You are referring to 38? A. Yes. I would like to make some explanation, if I may.
- Q. No. When for the first time did you see this exhibit? A. This exhibit we saw in court.
- Q. How about Government's Exhibit—— A. There is a misnomer on this book. That's what I wanted to—if I may, your Honor.

The Court: You better let your lawyer question you.

- Q. Would you point out to me where the misnomer is without giving any testimony? Just point it out. You are referring to the label on page 1, or the cover of Government's Exhibit 38? A. Right.
- Q. The label says "Harry & Dan Grossman Furs, Inc."; is that correct? A. That's correct.
- Q. Is that the correct label which should be attached to Government's Exhibit 38? (1594) A. That's not the correct label.
- Q. How is it that you say that it should be? A. Inside it says, "Dean Grossman Corp.". It does not say, "Harry & Dan Grossman," it says "Dan Grossman Corp.".
- Q. Is this another name Mr. Grossman was using? A. We believe so.
 - Q. Between '65 and '69, was there still another cor-

poration by the name of H & D Grossman? A. That's correct.

- Q. Was that the same corporation as a Harry & Dan Grossman? A. No. That was a different corporation.
- Q. Did you speak to Mr. Grossman about the H & D Corporation? A. He told us it was defunct.
- Q. Did you speak to Mr. Grossman about this particular corporation, H & D, between '65 and '71? A. We did.
- Q. What did he say? A. He said it was a defunct operation.
- Q. Was there also a corporation by the name of Bertram Operating Company? A. There was.

 (1595)
- Q. Between '65 and '71, did you speak to Mr. Grossman about this company? A. Yes.
- Q. What did he say? A. He said it was a real estate company.
- Q. Did you ask him whether it was engaged in any contracting? A. He said it had nothing to do with the fur business.
- Q. By the way, these companies we mentioned, aside from Harry & Dan Grossman, did you ask Mr. Grossman whether any of these companies were engaging in contracting? A. He denied it. We did ask him and he denied it.
- Q. By the way, under the contract were you entitled to look at any books and records that any of these companies might have had? A. No.
 - Q. Excuse me? A. No.
- Q. Now, Mr. Grossman joined the Richton Company in 1971; is that right? A. That's correct.
- Q. What name was he operating under about that time? A. Dan Grossman Fur Division, Richton International.

(1596)

Q. Do you know whether he was still operating either through or under any of these companies that we just discussed? A. Until we look at Richton books, which are here.

Q. Is that what you are referring to? A. It's No. 37.

Q. Yes. A. We didn't know that he had these other names operating through a public company.

Q. By the way, you have heard testimony in this trial,

have you not, about Mr. Poulos? A. Yes.

Q. Mr. Poulos was a contractor, do you recall that?

A. I heard Mr. Poulos testify.

- Q. Were you aware during this period that Mr. Poulos was doing contracting work for Mr. Grossman. A. We had suspicions that he was, but we didn't know it for a fact.
- Q. Did you ever visit his shop? A. I never visited his shop.
- Q. Do you know whether Mr. Poulos was placed on strike by the union? A. He was.
- Q. Toward the end of 1971 you met with Mr. Grossman; (1597) is that right? A. Yes.
 - Q. Who else was present? A. Mr. Stofsky.
- Q. Do you recall where you met him? A. We met him on his premises.
 - Q. Was there a conversation? A. Yes.
- Q. Would you tell the Court and jury what that conversation was between or among yourself, Mr. Stofsky and Mr. Grossman? A. We told Mr. Grossman now that he was a public company, part of a conglomerate, which we told him the union welcomed, this kind of a conglomerate coming into our industry, because it had very strong financial support, that we wanted Mr. Grossman to open a larger factory beginning 1972.

Charles Hoff-for Defendants-Direct

The only response Mr. Grossman made to us was that now that he was no longer a sole owner, as he said, but was responsible to a public firm, that he couldn't give us an answer to our request until he discussed it with the president of the firm, a Mr. Ricciardi. He said he would—well, we mutually agreed, I should say, that as soon as it was possible there would be a meeting between (1598) the union, Mr. Ricciardi and Mr. Grossman.

Q. Now, did that meeting take place? A. It did.

Q. Do you recall when, approximately? A. I would say to the best of my recollection a few months later.

Q. Would you tell us what happened at that meeting and who was present? A. Mr. Ricciardi was present, Mr. Grossman, Mr. Stofsky and myself.

Q. Was Mr. Ricciardi present through the entire meeting? A. There were times when Mr. Grossman and he stepped out and there was one time when he stepped out and left Mr. Grossman with us.

Q. Would you describe the conversation wat that meeting? A. Mr. Stofsky outlined to Mr. Ricciardi the union's request for a larger factory, so that we should avoid continual problems with this firm. Mr. Ricciardi wanted to know what kind of a factory we were talking about, how many workers we had in mind. The figure was given him that it would be over 20, or between 20 and 30. I am not sure whether the figure was 30 or between 20 and 30, but one (1599) of those two figures was mentioned.

Q. Was there any other conversation? A. Afterwards, Mr. Ricciardi and Mr. Grossman stepped out and conferred. When Mr. Grossman returned he told us that on Mr. Ricciardi's behalf he would let us know within a short time their answer. We didn't get an answer right then and there.

Q. Well, within a short time did you get an answer?

A. Yes, we did.

- Q. What was the answer? A. We were told that on or about the middle of the year, of that year, 1972, that the firm would begin to employ a substantially larger shop.
- Q. Did there come a time eventually when the firm did employ more union workers? A. Yes, it did.
- Q. Did they go up between 20 and 30? A. Well, if I may look——
- Q. Approximately. A. Yes. To get an exact count there is a note in evidence. I could look at it and give you an exact figure.

Mr. Rooney: Let the record reflect that I am showing the witness AJ, AK and AL for identification.

(1600)

A. This one.

- Q. You're referring to AJ for identification? A. Yes.
- Q. Does that refresh your recollection as to the exact number? A. Yes. In June 1972 the firm employed a total of 29 workers.
- Q. That figure embodies an increase; is that correct? A. Yes. It went up from 18 in May to 29. In April there were 11.
- Q. By the way, Mr. Hoff, were you invited to testify at the grand jury? A. I was not.

(1603) * * *

Cross-examination by Mr. Sabetta:

- Q. Mr. Hoff, you have given us the list of numerous corporations you say you know were in some way connected with Dan Grossman? Is that correct? A. I mentioned some, that is correct.
 - Q. You mentioned Halston? A. That is correct.

- Q. You mentioned Oscar de la Renta? A. Yes.
- Q. You mentioned Jo Copland? A. Yes.
- Q. Now, did you know of the existence of these corporations at any time prior to this trial? A. Yes.
- Q. For instance, when did you first learn of the existence of Halston? A. Some time in 1970.
 - Q. How about Jo Copland? A. Prior to that.
 - Q. How much prior to that? A. In the middle '60s.
 - Q. What about Oscar de la Renta? (1604) A. After 1971.
- Q. Do you know for a fact that these are corporations? A. I don't know.
- Q. So far as you know they may just be names of going businesses? A. They may.
- Q. You don't know if they are incorporated or not? A. I don't.
- Q. Do you know if they are in the fur business? A. I know that Oscar de la Renta is in the fur business.
- Q. Do you know that Halston is in the fur business? A. We know that Halston was a designer that Mr. Grossman featured.
- Q. Now, did you know that Jo Copland was in any way involved in the fur business? A. I know that he or she was one of his designers.
- Q. Do you know whether Mr. Grossman was connected with each of these entities? A. We know that he used their services. We did know that.
- Q. Do you know whether he had any ownership interest in that firm? (1605) A. We didn't know.
- Q. Do you know? A. No, except for Oscar de la Renta, we know that Richton and Oscar de la Renta have a relationship.
- Q. Do you know that Mr. Grossman had corporations or interests in companies which were other than the ones that were parties to the collective labor agreement? A. He told us that there were such companies.

Q. When did he tell you that for the first time? A. Prior to his joining Richton. I don't recall exactly when.

Q. That would have been prior to 1970 or so? A. Correct.

Q. You testified earlier that the union would have had no right to ask for the books of any of these other companies with which Mr. Grossman is affiliated? Is that right? A. That is right.

Q. Mr. Hoff, you have had a chance to work within the provisions of the collective bargaining agreement of 1969

through 1972, have you not? A. Yes.

Q. That is Government's Exhibit 2 in evidence. Are you familiar with the following article and subsection, (1606) article 2, subsection 3, which is at page 4, which reads as follows:

"This agreement shall bind the parties hereto, their respective members, representatives, successors and assigns, and if the firm is a corporation, the individual principals of the corporation, and it shall cover any fur shop or factory in which any of them may have an interest or establishment or operate in the United States, including its territories and possessions."

Are you familiar with that provision? A. I have read it

before, Mr. Sabetta.

Q. Is it your testimony under oath that if Mr. Grossman had an interest in a fur firm during that period of time the union would have had no right to request its books? A. Yes.

Q. That is your testimony? A. Yes.

Q. That provision in the contract would not apply to any of these other companies? Is that correct? A. Can I give you an answer other than yes or no?

Q. Well, why don't you tell us whether it is yes or no and then go on to explain it. A. Please repeat the question.

(Question read.)

(1607)

- Q. Can you do that, Mr. Hoff? Or do you want me to reframe it? A. Please reframe it.
- Q. I am asking you this: you stated you learned prior to 1971 some time when Mr. Grossman joined forces with Richton that Mr. Grossman had other companies in which he had an interest which was somehow involved in the fur manufacturing industry. Do you recall that? A. I did not say that, Mr. Sabetta. I'm sorry. I didn't say that they were involved in the fur industry. I said we asked Mr. Grossman in answer to Mr. Rooney's question about these firms and I named Copland and Halston, and DBG and Bertram Operating.
- Q. Is it your testimony that prior to 1971 at the time you had this conversation with Mr. Grossman, in or about that time, you had no knowledge that these firms were in the fur industry? A. That is correct.
- Q. And when you learned prior to 1971 that these firms were so involved, did you at that point make a request to Mr. Grossman for the books of these firms in which he had an interest? A. Mr. Sabetta, I didn't say that I learned they were (1608) involved in the fur industry before 1971. We said we knew about these firms before 1971.
- Q. Didn't you just tell us you had a conversation with Mr. Grossman prior to his joining Richton wherein he related these facts to you? A. I did say we had such a conversation.
- Q. Now, if he told you during that conversation of the existence of these firms, did you thereafter make a request of Mr. Grossman to produce the books of those firms pursuant to article 2, section 3, on page 4? A. Mr. Grossman told us, Mr. Sabetta, that DBG Trading was a real estate company, that Bertram Operating was in the realty business and had nothing to do with the fur industry, according to Mr. Grossman, and that Copland, Halston were design names and had no books or records that we could examine.

Q. What about Oscar de la Renta? A. I said I learned about Oscar de la Renta after he joined Richton.

Q. So on the strength of Mr. Grossman's representations that there were no books available you declined to pursue that matter any further? Is that right? A. That is right.

Q. I believe you told us that throughout the years (1609) Mr. Grossman had categorically denied contracting? Is that right? A. He did.

Q. And you knew that was not accurate in every respect? Is that not the truth? A. That is correct.

Q. So with respect to whether or not he contracted you believed him not to be telling the truth all the time? Is that right? A. Correct.

Q. And yet when it came to the representation about these books you accepted his representations in that respect? Is that right? A. We had no proof, Mr. Sabetta, that there were such firms in the fur industry, even though we sought whatever help we could to try to locate their association in the fur business.

Q. I believe your testimony under oath, Mr. Hoff, is that the firm with which you were familiar is that of Harry and Dan Grossman? Is that right? A. Yes.

Q. And you said you were told by Mr. Grossman that H & D Corporation was a defunct organization? Is that correct? A. Correct.

(1610)

Q. When did he tell you that for the first time? A. I don't recall the year.

Q. Can you approximate it? A. I don't want to take a guess, Mr. Sabetta. I would like to be as accurate with this testimony as I can.

Q. Well, would it have been as late as 1970 or would it have been some time in the 1960s? A. It was prior to 1971.

- Q. Do you recall how much prior to that? A. I don't recall.
- Q. Is it your understanding that Harry and Dan Grossman Corporation was the firm which had always been a party to the collective bargaining agreement? A. In '65 Harry and Dan Grossman Fur Corporation was the one who joined the association, and in 1967 we have in evidence something I testified to, that this was the firm we took to the impartial chairman.
- Q. So as far as your recollection is concerned, beginning with the Grossman firm's membership in the Associated Fur Manufacturers group, it was always the Harry and Dan Grossman Corp. entity? A. Until he became Dan Grossman Fur Division of Richton.
- Q. And that didn't take place until 1971? Is that (1611) correct? A. That is correct.

Mr. Sabetta: May we have these marked as the next two exhibits, please. (Government's Exhibits 62 and 63 marked for identification.)

- Q. Mr. Hoff, I would like you to direct your attention to 62 for identification. I ask you if you can identify that document? A. Yes.
- Q. Tell us what it is. A. It is a complaint marked March 18, '66, the firm gives out contracting.
- Q. Do your initials appear anywhere thereon? A. They do.
- Q. Do you remember filing that complaint? A. Now that you bring it to my attention I recall it.
- Q. And what is the name of the corporate entity against whom that complaint was filed? A. It says H & D Grossman.

Mr. Sabetta: We offer this in evidence.

The Witness: May I make an explanation?

Mr. Rooney: No objection.
The Court: Received (1612). (Government's Exhibit 62 received in evidence.)

Q. Now, Mr. Hoff, is it your testimony that that document was made by you? A. Yes.

Q. You wrote out H & D Grossman on its face? A. Yes.

Q. Do you now want to explain to us what you meant by writing H & D Grossman? A. If you will permit—

Q. Please. A. It is a common practice, Mr. Sabetta, to use the name of the last name of the firm. If I had written Grossman on here it would have been just as permissible to investigate this shop, just as I wrote H & D, Harry and Dan. As a matter of fact, this is the complaint that appeared, I believe, before the impartial chairman or something similar to this one—I withdraw that—

When we went before the impartial chairman at the beginning of '67 we used the name Grossman at that time, and when we appeared before the impartial chairman the chairman asked him the corporate name, and the corporate name was Harry and Dan Grossman in 1967.

Q. So your testimony is that H & D Grossman is just a shorthand used by you? Is that correct? (1613) A. That is correct.

Q. Incidentally, do you know whatever happened to this complaint? A. Can I see it again? It was not processed before the impartial chairman.

Q. Never prosecuted? A. No.

Q. Now, Mr. Hoff, would you tell us what books were examined in 1973 by the union specifically? A. 1973?

Q. Correct. A. Dan Grossman Fur Division of Richton, Oscar de la Renta.

Q. Now, Dan Grossman Fur Division of Richton was a firm whose books you had access to under the contract? Is that right? A. Yes.

- Q. And had you examined them prior to that date in time? A. No.
- Q. In those books you found evidence of contracting? Is that right? A. We found it in those books and in Oscar de la Renta. The bulk of the contracting was in Oscar de la Renta.

(1614)

- Q. Were any records made of that examination? A. I believe so.
- Q. Do you have those? A. I don't know if we have them here. Q. Have you asked anyone to make a search for those records? A. Pardon me?
- Q. Have you asked any union employee or anyone else to make a search for those records? A. No, I have not. We prevented that—
- Q. I think you have answered the question, Mr. Hoff. Is it your testimony that these records were amongst the group that you examined or that the union examined in May or so of 1973?

The Court: Show them to the witness.

Mr. Sabetta: I am showing him 37 in evidence.

A. No, it is not.

- Q. Which books were examined? A. The books beginning with February, 1972—may I explain?
- Q. Please. A. The 1971 books which you show here were not in evidence or was not permitted to be examined because a new contract began in February, '72. We are not able to (1615) go back under an old agreement when we make an examination.
- Q. Well, when Mr. Grossman's firm became known as Dan Grossman Fur Division of Richton International, did you know about that change? A. Yes.
 - Q. That was in '71? A. Yes.

Q. Did you make a request thereafter to look at the books relating to that firm? A. For '71 we did not.

Q. You mean Mr. Grossman had been contracting for some time, did you not? A. We had suspicion that he was.

Q. Now, if you had looked at his books shortly after his firm became known by that title would you have found evidence of contracting of the kind you later found in '73? A. After examining them as a result of their being put in evidence I believed that we would have found them, yes.

Q. In other words, the union could have filed a complaint and thereafter examined the books or made a request for the books of Dan Grossman Fur Division of Richton International? Is that correct? A. Yes.

Q. And these books you have had a chance to look at (1616) them during the trial? A. During the trial.

Q. You would have found upon examination that there were a multitude of contractors listed in those books, would you not? A. If in '71 there were.

Q. So at you are saying in effect is that the evidence which was later accumulated in '73, at least, part of it, was available to the union as early as 1971? Isn't that right? A. The evidence we accumulated in '73, Mr. Sabetta, could only go back as far as February, 1972.

Q. What I am saying, Mr. Hoff, is that these books show on their face contracting to a number of contractors, do they not? A. Yes.

Q. And there was no prohibition either in the contract or any state or federal law which could have kept you from looking at those books had a proper complaint been filed? A. Yes, you're right about 1971.

Q. Now, Mr. Hoff, did you ever ask any of Mr. Grossman's workers at his shop whether Mr. Grossman gave out work? (1617) A. Yes.

Q. Did they ever give you the names of any of the contractors he employed? A. They did not.

Q. Did they deny he was contracting? A. They said they didn't know for a fact.

- Q. You heard the testimony here at the trial from Mr. Poulos and others that during the busy season he would make as much as 10 to 12 coats a week for Mr. Grossman. Did you hear that testimony? A. I heard what Mr. Poulos testified to.
- Q. You heard what Mr. Grossman testified to, did you not? A. Yes.
- Q. Did you hear Mr. Grossman testify that out of 2.5 million dollars worth of volume, some two million dollars was produced in shops with contractors for that period, '70-'71? Do you remember that testimony? A. I don't recall what years he alluded to, but I know he did say that he gave out a tremendous amount of contracting.
- Q. Now, did you at any time ever ask Mr. Gold to focus directly on Mr. Grossman's shop in attempting '70 or '71 to make any catches? (1618) A. I might have. I don't exactly recall.
- Q. Do you recall Mr. Gold's testimony that he could recall no such specific direction from you? Do you recall him testifying on Friday? A. I don't recall that.
- Q. Do you have any present recollection of having asked him to do that? A. I say I don't recall.
- Q. Might that have been one means the union could have employed to attempt to determine who the contractors were or if Mr. Grossman was contracting? A. We did employ another method.
- Q. I am asking you whether that was one method that you might have employed which apparently you did not employ? A. I said we did employ another method. If you will permit me to tell you what that was I will tell you what it is.
- Q. Mr. Hoff, I have no objection to your telling me, but first I want an answer to the question.

The Court: What is your question, please? (Question read.)

A. Yes, it could.

Q. Now, in the period of 1968, say, through '71, did you have any idea what volume of business Mr. Grossman's (1619) firm was doing? A. No.

Q. You had no idea whatever? A. No.

Q. Who assigned you to Mr. Grossman's shop as a business agent? A. I believe—I'm not sure—you're taking me back to 1965. It could either have been the manager of the union or the management committee.

Q. Do you know what criteria was utilized in making that decision? A. I agree that I was best equipped to try

to deal with the Grossman problem.

Q. My question is, Mr. Hoff, do you know what criteria was employed in making that selection, in assigning you to the Grossman shop? A. I was at that time an assistant manager in the union, I was a business agent in the union for many years at that time.

Q. Now, you were assigned to three or four or five

other firms during that period? A. Probably.

Q. And did you know what the volume was cothose particular firms during this period, '65 through '71? (1620) A. I don't recall.

Q. Would you say it was amongst the largest shops in

the industry? A. One of the largest.

- Q. As a matter of fact, Neustadter was one of the largest and had about 65 employees? Is that correct? A. What year are you talking about?
 - Q. Right now I am talking about. A. Yes, about 60.
- Q. Isn't it a fact that they are going out of business?

 A. It seems that way.
- Q. Now, the other firms of which you were a business agent, how many employees did they have? A. The J. Weinig & Sons shop has today about 70 workers.
- Q. And how about the other shops with which you are connected as business agent? A. Oliver Gintel has about 30 workers.
 - Q. Any other shops? A. No.

Q. Now, do you have any idea what their volume is per year, those firms? A. Not exactly.

Q. Well, do you have a rough idea? (1621) A. Neustadter had a volume of about three million, three and a half million.

Q. How about Mr. Weinig? A. I don't know what his volume is.

Q. Would it have been greater than a million dollars?

A. I would imagine it is. It's very difficult to make an estimate of the volume in his shop.

Q. How about Mr. Gintel's shop? A. Gintel's volume should be about a million and a half.

Q. What is the name of that shop? A. Oliver Gintel.

Q. With respect to Mr. Grossman, what was the volume of his shop? A. Well, we learned during the trial it was two and a half million.

Q. During the late '60s and 1970, '71, did you have any idea what the volume was of his shop? A. I did not.

Q. Did you have any idea of what the volume was of these other shops which you just gave us figures for during that period? A. During the late '60s, I did not.

Q. When did you learn the volume figures for those (1622) firms? A. Later, when we prepared ourselves for the negotiations of the '72 agreement we obtained those figures.

Q. When you prepared yourself for the 1969 to 1972 agreement you didn't seek to prepare yourself in quite the same way? A. The proposals of the union were a little different in 1972.

Q. Is the answer to my question, "No, I did not seek to prepare myself the same way"? A. Yes.

Mr. Rooney: I object to that statement, your Honor.

The Court: Overruled.

Q. So it was just with respect to the 1972 collective negotiations that you at least personally saw fit to inform yourself of the volume figures? Is that right? A. Right.

Q. Prior to that time you had undertaken no steps to acquire that information? Is that right? A. Correct.

Q. And you were the business agent for these different shops? Is that right? A. Right.

(1623)

Q. Now, did you know how many employees Mr. Grossman had on hand in 1970 and 1971 in his shop, his factory? A. If you let me look at the notes I will give you an exact figure.

Mr. Sabetta: I will be happy to let you look at the notes. Are they marked?

The Witness: They are marked.

Mr. Sabetta: I am placing before the witness, your Honor, all the previously marked exhibits.

The Witness: What year, Mr. Sabetta? During 1970 he had an average of about 11 workers—when I say average, there was one month when he had more; there were some months, two months that he had more, some months that he had less. In December, '70, we have 11 workers.

Q. Now, based on your many years in the industry would you say that 11 workers would produce 2.5 million dollars worth of garments? A. No, but 11 workers could produce between three and four hundred thousands that he testified to.

Q. You had no knowledge that his companies were producing in excess of three or four hundred thousand dollars for the year? Is that right? A. That is right, because we knew in addition to his manufacturing he did a certain amount of jobbing.

(1624)

Q. Now, would you say that it was common knowledge that Mr. Grossman was one of the more successful men in the industry? A. That's a difficult question to answer when you say common knowledge.

Q. Let me reframe it, then. Did you hear Mr. Grossman's testimony that in early 1971 he sold his company for a sum of over \$1 million? A. I don't recall the amount, but I heard him say that he sold it.

Q. Do you recall that he said he got \$250,000 for good will and over \$800,000 for the remaining assets which he wasn't able to keep under the contract; do you recall that testimony? A. I don't recall the sum of the money, but I recall him saying that he sold it to a company called Richton International.

Q. Now, that fact became a matter of public record, didn't it, in the marketplace? A. Yes. Right.

Q. It was well known that he made such a sale? A. It was in the trade newspaper.

Q. There was information about the size of the money paid to him, or which would be paid to him? (1625) A. I don't know if there was any information about the amount of moneys that were transacted.

Q. Did you hear his testimony that he told Mr. Stofsky—or rather Mr. Stofsky told him at a luncheon that he heard he made a good deal for himself; do you recall such testimony? A. I don't know if there was such a luncheon, Mr. Sabetta.

Q. Did the fact that he sold his companies for that sum come as a surprise to you? A. I'm not surprised at anything Mr. Grossman says.

Q. Did you personally know that he was a very successful businessman in the fur manufacturing industry in the late '60s and early '70s? A. I had no way of knowing. From a personal point of view, I never mingled or associated with him outside of business duties.

Q. Would you say that there was no part of your duties as the business agent to his shop to learn of the relative financial health of his corporation? A. I don't think it was my duty as a business agent, no. Not with Mr. Grossman.

Q. You weren't concerned about the survival or expansion of that firm? (1626) A. We were concerned.

Q. As a matter of fact, you were so concerned that you and Mr. Stofsky went to him and said you have to add 20 people; isn't that right? A. Yes, sir.

Q. What was that determination based on? A. Because after he did sell the company—not before or during the sale, after he sold the company we were able to get some information, since it now was part of a public firm. Prior to that it was not a public firm, it was a privately owned organization, information about he withheld.

Q. Is your testimony that sale took place early in 1971, right? A. I heard him testify that it took place in February '71.

Q. Do you have any independent knowledge of that fact? A. Prior to that?

Q. Prior to coming into this courtroom, yes. A. That he sold it? I didn't know what year—what month he sold it. I knew it was in '71.

Q. Now after the sale, when you say you then became able to secure certain information you are still quite (1627) sure, however, that in no time in 1971 after the sale did you ask to see the books of that firm? A. I did not ask to see the books.

Q. This was after many years of contracting on the part of Mr. Grossman, isn't that right? A. Undoubtedly.

O. You heard Mr. Gold say that Mr. Grossman was a known violator, didn't you? A. If you say he said it, I will take your word for it.

Q. Did you hear Mr. Stofsky say that he was one of

the outrageous violators of that contracting provision?

A. He was a violator.

- Q. And he was known to be such by the union? A. He was.
- Q. And yet after the sale of his company when this information became available, you did nothing to secure his books in 1971? A. No. We didn't secure his books, but we held a meeting with him about increasing the size of his shop.
- Q. As a matter of fact, no complaint was ever filed against Mr. Grossman in 1971, or '72, for the falsification of his books, isn't that right? A. I didn't know there was a falsification of his (1628) books.
- Q. Well, in 1971 you say your request of him to add 20 workers was premised on certain new information becoming available to you which led you to conclude that he had been contracting on a large scale; isn't that correct? A. That he had been contracting, yes.
- Q. You asked him to add 20 workers. Isn't that a substantial force? A. Yes.
- Q. Is it your testimony that never prior to that time had you an opportunity to review the books of his firm? A. Of which firm?
- Q. Of the firm which was a party to the collective agreement. A. The Richton firm?
- Q. Of the firm which was a party to the collective agreement, whatever it's name. A. What year are you talking about now?
- Q. I am talking about at any time prior to the receipt of this information from the public company, Richton. A. We did examine the books of the firm that was under centract.
- Q. Did you find any contracting in there? (1629) A. No, we did not.
- Q. So, when you learned after '71 of the sale to Richton, by virtue of the information now available to you

from a public company that apparently he had been contracting on a large scale, you still did not file any complaint for falsification of books; is that right? A. We didn't believe we could substantiate falsification of books. Frankly, Mr. Sabetta, I don't understand your designation of falsification of books.

- Q. Do you know that falsification of books is treated very harshly by the collective agreement? A. Yes, but not in the sense that you use it at this hearing.
- Q. I direct your attention to Government's Exhibit 1, Article 19, Subsection B, and ask you whether that would be applicable for a manufacturer, a party to the agreement, who falsifies his books regarding contracting. A. No, it would not.
- Q. It would not be. This sanction would not be available? A. It has nothing to do with contracting, Mr. Sabetta.
- Q. If a manufacturer falsifies his books regarding contracting, what sanction is available to the union? (1630) What can they seek from the impartial chairman? A. They can seek a suspension from the collective labor agreement.
- Q. That's if he falsifies his books; is that right? A. It's not what you said. You said with regard to contracting.
- Q. That's what I am asking you now. A. With regard to contracting, the union would seek a suspension.
- Q. What would that be based on? A. A system of contracting that we could prove adequately before the impartial machinery.
- Q. So that the sanction available to the union in that case for falsification could be as much as a suspension from the agreement; is that right? A. May I explain something?
- Q. Well, would you answer that first and then explain it. A. The system of contracting leads to suspension of

the agreemnt. Falsification of books, as noted—as you pointed it out to me in that contract relates to payroll falsification, because it says falsification of books and kickbacks. Kickbacks relate to payroll kickbacks and the falsification relates to payroll falsification and (1631) not contracting. There was a separate section dealing with sanctions on contracting in that agreement and every agreement where there is a prohibition.

Q. Your testimony would be that notwithstanding the plain meaning of this language regarding falsification, you could not file such a complaint Mr. Grossman for that? A. I explained to you what the falsification relates to in that agreement. It relates to payroll falsification.

Q. There is no doubt in your mind that if such a falsification had taken place regarding contracting, that you might well be able to suspend Mr. Grossman's firm from the protection of the agreement, isn't that right, if you were able to prove that? A. If we were able to.

Q. Now, did you ever order or request Mr. Shifrin during the period of '68 to '71 to make any in-depth book analysis of Mr. Grossman's firm? A. I don't recall.

Q. You don't recall? A. No.

Q. Have you sought to examine union files for any documents which might relate to any such request? A. I have not.

(1632)

Q. You have not done so? A. No.

Q. So, you don't recall now whether you ever asked the union accountant, or the man who functions in that fashion, to make any such examination; is that right? A. Mr. Sabetta, there is no union accountant, except the accountant that handles the union books and records. The union does not employ an accountant for book investigations of other firms. Mr. Shifrin is not an accountant he is a business agent.

Q. Having said all that, is it your testimony that Mr. Shifrin does not perform book analyses for the union? A. He does it on occasion for shops that we ask him to do it for.

Q. Right. My question now is did you ever ask him to do that for the firm of Grossman for '68 to '71? A. I don't

recall.

Q. You just don't recall. You were the business agent during that period, weren't you? A. Yes.

Q. You only had four or five shops, isn't that (1633)

right? A. Yes.

Q. And you just can't recall now whether you ever asked him about that; is that right? A. Right.

Q. Did you request anyone in the union to make a search of the files for those documents? A. I did not.

Q. I showed you Government's Exhibit 62 before and you identified that as a complaint you had filed; is that right? Do you recall that? A. Yes.

Q. No action was taken on that; is that right? A. Cor-

rect.

Q. Do you recall a complaint being filed in 1967 which resulted in a fine of \$150 two years later? A. You will have to show it to me, if you don't mind.

Mr. Sabetta: May we have this marked as a separate exhibit, please.

(Government's Exhibit 64 was marked for identification.)

Q. I show you 64 for identification. I ask you to direct your attention to this entry, the third entry down, (1634) and see if that refreshes your memory. A. This doesn't tell me the nature of the complaint.

Q. Well, if I told you that it was a complaint for con-

tracting, would that refresh your memory? A. I would like to see the complaint, Mr. Sabetta.

Q. You have no recollection of this, is that right? A. It's very possible that what you say is accurate, but I would like to see the complaint to refresh my memory.

Mr. Sabetta: I am showing the witness 63 for identification.

A. Is that the same complaint?

- Q. 9/20/67, No. 19923, preceded by A. A. Right. I read it now.
- Q. This complaint was not filed by you; is that right?

 A. No.
- Q. It was filed by Mr. Maginsky; is that right? A. I believe so.
- Q. Do you recognize his initials on there? A. They were not written by him. They were written by the Associated adjuster.
- Q. Whose initials are those? A. Fiegus and Maginsky. (1635)
- Q. If I told you that this complaint was settled on January 29, 1969 for \$150, would that surprise you? A. No, it wouldn't. I'm aware of that.
 - Q. You are aware of that fact? A. Yes.
- Q. Was any book examination then based on this complaint? A. I don't recall.
 - Q. You don't recall that? A. No.

You are aware of the fact that it was settled almost two years later, though? A. Yes.

- Q. But based on this complaint you never asked Shifrin to perform any book analysis; is that right? A. I don't recall.
 - Q. I beg your pardon? A. I don't recall what was done.

Mr. Sabetta: I offer this in evidence.

Mr. Rooney: I have no objection to this. No objection, your Honor.

The Court: Received.

(Government's Exhibit 63 was received in evidence.)

(1636)

Q. Mr. Hoffman, do you recall whether any complaints were filed against Mr. Grossman's firm in 1968? A. I wouldn't recall, no.

Q. You don't recall? A. I wouldn't remember. There probably were, but I don't recall if there were. That's six years ago, Mr. Sabetta.

Q. Have you made any attempt to get that sort of information before taking the stand at this trial? A. I have not.

Q. Would it surprise you if I told you no such complaints were filed in 1968? A. If you tell me I will accept your word.

Q. Do you recall whether a complaint was filed in August of 1969 for contracting against Mr. Grossman's firm? A. I don't remember.

Q. Would it surprise you if I told you that complaint was never prosecuted? A. May I see the complaint?

Q. You have no recollection of the filing of any such complaint; is that right? A. No, I don't.

Q. Would it surprise you if I told you a complaint (1637) was filed on November 10, 1970 which was never prosecuted? Do you have any recollection of that? A. I do not.

Q. Would it surprise you if I told you that no complaint was ever filed in 1971 against his firm for contracting? A. I testified to that already.

- Q. Now, I would like you to tell us specifically how it was that you and Mr. Stofsky arrived at the figure of 20 new employees as the number which Mr. Grossman should add to his shop. A. After it became a member of a public firm in 1971 we learned the gross volume—the gross sales volume that this company was doing. It was over \$2 million.
- Q. Which company was that that you learned about? A. Dan Grossman Fur Division, Richton—Richton International.
 - Q. Yes. A. We knew that he did over \$2 million.
- Q. Where did you learn that from? A. From public information.
- Q. Where? What was the source of it? A. For one, there was an interview with Mr. Grossman in the Women's Wear, I believe, or an article about Grossman (1638) in the Women's Wear. For another, it was information we gathered in talking to some of the dealers in the market.
- Q. Was that the first time you ever spoke to dealers about the volume of his firm? A. It may have been the first time.
- Q. Do you have that newspaper article with the \$2 million figure for the Dan Grossman Fur Division? A. We don't have it here.
 - Q. Is it in the union files? A. I don't know.
- Q. Did you try to get a hold of that before testifying here today? A. No, I did not.
- Q. Now, at the time that Mr. Grossman and you and Mr. Stofsky were talking about these matters, the induction of 20 new employees, do you recall whether any union employees were out of work? A. In November of 1971 they were fully employed.
- Q. There were no union employees out of work? A. In November of '71 the industry is working. This is part of the—the major part of our season, November. As far as

we knew we had no one unemployed—no mink workers unemployed.
(1639)

Q. What about the first six months of the following year, 1972? A. We may have had some unemployed, but by the time that the workers were added in June, 1972, there were no mink workers unemployed.

Q. So it was that reason, at least partially, which was the basis for the union's sanction for Mr. Grossman simply to take in 29 union—otherwise non-union people and make them union employees; is that right? A. This was not the first time, Mr. Sabetta, that the union agreed to take in non-union workers out of contracting jobs and give them union entry in the union books. We had done this for many years prior to 1972.

Q. In 1972, in the first six months, did you or Mr. Stofsky or anyone else who had direction seek to determine whether there were any out of work union employees who could perform the jobs which were going to be performed by Mr. Poulos and his theretofore non-union people? A. When workers are out of work, they normally come to the union to seek help for employment. It is not unusual for them to do that.

Q. So, your testimony is that there were no such people unemployed by that time? A. By June of '72, from what I can recall, the mink (1640) workers were working.

Q. Do you recall my reading Mr. Stofsky's grand jury testimony to him where he said in March of '72 over half of the union employees were then unemployed? A. I don't know whether he acknowledged, Mr. Sabetta.

Q. Let me begin there. Do you remember my asking him that? A. I remember you reading the testimony.

Q. Do you remember he said that there were two categories of unemployment, those people who had a job, who were simply laid off, and those people who had no jobs, or were without shops; do you remember that? A. Yes.

Q. Is it your testimony that during this period when you were deciding these issues regarding Mr. Grossman, that there were no union employees who were mink mechanics, who were without employment of any kind? A. By the time that these workers got entry into the union in June of '72, mink workers were working. There were no mink unemployed workers.

Q. When you were discussing this with Mr. Grossman, you told him at the very beginning that he could take in one of these contractors, didn't you? (1641) A. We always discussed——

Q. Is that true, Mr. Hoff? Would you try to answer my questions. A. Yes, we did say that.

Q. That was long before June of 1971 or '72, wasn't it?

A. It was several months before.

Q. At that time, at least, there were people unemployed, isn't that right? A. That's correct.

Q. You didn't say to Mr. Grossman, Mr. Grossman, before you take in one of your contractors, we want you to take in some of the then unemployed union workers, isn't that right? A. No, but we said something else to him.

Q. The answer to my question is you didn't say that, isn't that right? A. We did not. I said we did not, but we said something else to him.

Q. All right, tell us what else you said, Mr. Hoff. A. We said that it's just as important for us to dissolve a contracting operation as to take in workers from a contracting shop into the union and give them entry with union books as to get a job for an unemployed worker (1642). Now, we knew that this transfer or changeover was going to take place some time in the month of June.

Q. How did you know that? A. In your discussion.

Q. When did you learn that for the first time? A. We learned that between the meeting with Mr. Ricciardi and the takeover, or the changeover in June of 1972. Some-

wheres in that period it was agreed that it would take place in June.

- Q. But you didn't know that at the outset when you first raised this issue with Mr. Grossman, isn't that right? A. In November we didn't discuss a time period because there was no agreement that it would take place.
- Q. Now, the filing of complaints for contracting is basically within the decision of the business agent, isn't that right right? A. Yes.
- Q. You heard Mr. Lageoles' testimony the other day that whether or not to prosecute that complaint would frequently be a matter which would be discussed with you, isn't that right? A. True.

 (1643)
- Q. You, together with the business agent, would make some assessment about whether to prosecute before the impartial chairman, isn't that right? A. Yes.
- Q. Additionally you would have a role, if not the principal role in determining what penalty ought to be asked against the manufacturer from the impartial chairman, isn't that right? A. That's correct, but we make that decision after the case is heard before the impartial machinery before the panel. It's a panel that hears a contracting case.

Q. As a matter of fact-

Mr. Rooney: May the witness finish that answer, please?

The Court: Yes. Let him finish.

- A. It is a panel consisting of an employer representative, a union representative and the impartial chairman.
- Q. Your testimony is that when you walk into that room on that dispute, you have not yet decided in any fashion what it is you are going to ask from the impartial chairman, is that right? A. That's correct.
 - Q. You have no idea? (1644) A. We discuss it, but

we can't determine in advance the nature of the contracting unless we have it all in writing, through a book examination. But, if it's undertermined—the nature or amount of contracting, we can't decide that until after the case is tried.

- Q. Now, is it your testimony that before you try the case you have yet to uncover all of the evidence in the case? A. Can you give me that again, please?
- Q. Yes. Isn't it a fact that by the time that you reach the impartial chairman, you have got all the evidence you are going to get? A. No. That is not so.
- Q. Well, in some instances you go to him and ask for an order to examine certain books, isn't that right? A. Sometimes.
- Q. But sometimes you just go in and prosecute that complaint, isn't that right? A. Yes.
- Q. In those latter instances you have all the evidence you are going to have, isn't that right? A. No, it is not.
- Q. Well, you mean in the middle of the proceeding (1645) there is additional evidence that you are able to acquire? A. Sometimes we elicit it from the employer.
- Q. Prior to the proceeding you have not determined whether this is a system of contracting or a single instance of contracting? A. We tried to.
- Q. Now, you have some role, do you not, in deciding whether even to calendar the case before the impartial chairman? A. Some role.
- Q. Would you tell us what that role is? A. There is a secretary of our committee on immediate action. One of our business agents acts in that capacity. He discusses with me what should go on the following week's calendar.
- Q. Wouldn't you say you have the ultimate judgment in that respect? A. We are a democratic union, Mr. Sabetta. We listen to someone else's opinion as well.
- Q. If there was a disagreement, who would have the final word? A. We don't have those disagreements.

Q. You never have those? There is never a difference of opinion in that? (1646) A. Rarely.

Q. In those rare cases, whose word would be the final word in that respect? A. It probably would be mine.

Q. What about the mechanism of settling these disputes privately without going before the impartial chairman, what role do you have in that? A. I would like you to define

the word private.

Q. Well, I am talking about a case where a contracting complaint is filed and then settled directly between the union and the manufacturer without calendaring the case before the impartial chairman. Does that ever happen? A. Only if it's an independent shop, a shop that is not represented by any Association. But if it's a firm that's represented by an Association, whether it's the Associated Fur Manufacturers or the United or the Retail Guild, it's done together with the representative of that organization.

Q. Sometimes that complaint is resolved without the necessity of a hearing before the impartial chairman, isn't

that right? A. That's correct.

Q. The union would settle on an agreement upon price (1647) or fine directly with the manufacturer through his representative with the Association; is that right? A. That happens occasionally.

Q. Do you have any role to play in that? A. I do.

Q. What is that role? A. We discuss—first I equip myself as to the nature of the complaint. I try to get the fact from the business agent before we sit down and discuss

anything.

Now, we have had occasionally when we try to sit down and discuss with the employer representative who then confers with his member—the employer, and we found that we couldn't get anywheres. It wasn't possible. Even though both sides made the attempt, it was not possible to make any kind of a settlement. Occasionally we have made

a settlement, and I have met—when Mr. Hecht was the manager of the labor department, I have met Mr. Hecht on many occasions to try to resolve and settle these complaints without coming to a hearing.

- Q. Who in the union would decide what figure would be a just one in those circumstances? A. It would be a combination of the facts, the information on the particular issue given to me by the business agent and the business agent and I agreeing were (1648) determining what would be a reasonable settlement. That does not mean, though, that we would achieve that figure, or whatever it might be. We are mainly interested, Mr. Sabetta, in cases regarding contracting, how many additional workers we can place on the job.
- Q. Again, in those rare instances, where you and the business agent disagreed about the nature of the fine, whose word would be decided? A. We have never had such a disagreement that I can recall.
- Q. Let me ask you this: Have you ever negotiated for the settlement of a contracting complaint with an Association member with someone other than his representative in the Association? A. No.
- Q. Have you ever had occasion to meet and deal with Mr. Henry Katcher in such circumstances? A. No.
- Q. Do you recall ever having lunch with Mr. Katcher or Mr. Stofsky regarding a settlement of a contracting complaint regarding the Baker Merchandising firm, or Breslin Baker? A. I don't recall any such settlement.
- Q. You recall ever meeting with the people I (1649) mentioned plus Mr. Hecht in a settlement of any such dispute? A. You mean Mr. Katcher and Mr. Hecht?
- Q. Mr. Katcher, Mr. Hecht, yourself and Mr. Stofsky. A. Regarding Baker?
 - Q. That's right. A. No, sir.
 - Q. Would it help you if I told you that you had met in

the fashion I am suggesting some time in September, October or November of 1970? A. I don't recall any such meeting.

Q. Do you recall any such meeting for the early part of '71? A. We never had a meeting with the parties you mentioned regarding Baker.

Q. Do you remember a complete for contracting filed against Mr. Baker in the fall of 1970? A. It's possible. I don't particularly handle that shop. It's very possible there was such a complaint.

Mr. Sabetta: I am showing the witness 62 for identification.

Q. I ask you if you have ever seen that prior to today.

A. I probably saw it, Mr. Sabetta.

(1650)

Q. What is it? A. It's a contracting complaint.

Q. Against which firm? A. Against the firm of Baker Merchandising on October 7, 1970.

Q. Do you have any recollection of how that was resolved? A. I believe it went before the impartial chairman.

Q. Do you know what the fine was? A. No, I don't remember.

Q. Would it help you if I told you it was \$500? A. I don't recall.

Q. Now, are there instances where a fine is agreed upon before going to the impartial chairman and then registered with him as a matter of record? A. If it would be a settlement, an agreed upon settlement between all parties.

Q. So in a case where, let's say, a complaint of this kind between the union and Baker Merchandising for contracting resulted in the private settlement you have been describing for \$500, you would then, pursuant to the regular means of handling this, all go before the impartial

chairman and register that settlement of that complaint? Λ . That would happen, but it did not happen with (1651) Baker.

- Q. You are sure of that? A. Yes.
- Q. Do you remember Mr. Katcher being involved at all with any of the problems regarding contracting of the Baker firm late in '70 or early in '71? A. No, I do not.
- Q. You were never present at a luncheon when Mr. Katcher handed an envelope to either you or Mr. Stofsky in connection with that labor dispute? A. No. There was no such luncheon.
- Q. Have you ever had lunch with Mr. Katcher? Λ . Occasionally.
- Q. Did you ever have lunch with him late in '70, early in '71? A. I don't believe so.
- Q. Your best recollection now is that you did not, is that right? A. I don't recall, Mr. Sabetta.
- Q. Now, you have heard testimony at this time regarding a number of complaints filed against Mr. Walter Steil; have you not? A. Yes.
- Q. In fact, you have even seen those complaints? (1652) A. I saw some of them, yes.
- Q. Do you recollect that in 1968, four separate complaints for contracting were filed against Mr. Steil? A. If you will allow me, I would like to see them again to refresh my memory.

The Court: We will take a recess. Don't talk about the case.

(Recess.)

(1653)

By Mr. Sabetta:

Q. Mr. Hoff, would you look at the documents that I

placed before you and you asked to see, 16 through 19 in evidence. A. Yes.

Q. Do you remember ever having seen those prior to this trial? A. No, I have not.

Q. Did you ever talk to Mr. Wolliner about those? A. There are two complaints, Mr. Sabetta. This is number 19 and number 18, where the firm denies giving out contracting, and in one instance, on number 18, it says books being examined. I don't recall the result of that book examination. These are both 1968.

Q. As far as I know, these two were not brought before any panel.

Q. Were the earlier two ever brought before any panel?

A. I don't know.

Q. Do you see the reference to the earlier ones with reference to Victor Lust? A. Yes, I see that on March 29th, I notice that.

Q. Do you know Mr. Lust? A. No, I never met him. (1654)

Q. Do you know that he was a party or was at that time and still is a party to the collective agreement? A. I believe he was at that time.

Q. And even though he was a one man shop? A. I believe he was.

Q. Now, do you know that the reference, the \$85 worth of labor performed by Mr. Lust, does that complaint, the earliest in time, March 29th, reflect a charge that Mr. Steil was contracting because he gave out labor to be performed by Mr. Lust? A. It says \$85 labor in 1967.

Q. And Mr. Lust was a union shop at that time or not? A. In '67? I don't know.

Q. Now, do you know whether Mr. Lust was ever charged with any offense as a result of this? A. I'm not acquainted with it. He may have been, but I don't recall.

- Q. Did you hear the testimony of Mr. Steil that Mr. Lust told him that he had been fined \$750 as a result of this contracting offense? A. I do now. I do not know if it is this particular one, because I know it was settled November 19, 1968.
- Q. But you see the reference to Lust, bill 407 for \$85? (1655) A. Yes.
- Q. And you heard Mr. Steil's testimony that Mr. Lust told him he had been fined \$750 for the \$85 worth of labor for Mr. Steil? A. Now that you remind me, I recall it.
- Q. Did you have any role in determining the size of the fine to be imposed on Mr. Lust's one man shop? A. I did not.
- Q. Was this decision made wholly independent by Mr. Ruelner, so far as you know? A. I don't recall. I don't know. I don't recall that incident at all.
- Q. Since the testimony in this trial by Mr. Steil in the introduction of those documents, have you undertaken to review the union files in connection with these matters? A. The files would only give us a duplicate of the information you just showed me. Mr. Ruelner has retired for several years and is now living in Florida and we have not got in touch with him.
- Q. Have you checked out the so-called tub cards in connection with this matter? A. No, I have not.
- Q. You have also heard testimony and seen Government's Exhibit 15, which was the work product of Mr. Schifrin, (1656) which you say was at your request in connection with the Daniel Fur firm? Do you recall that? A. Yes, I do.
- Q. You have seen or you did see prior to the trial this Exhibit 15 in evidence? Is that correct? A. I have seen that.
 - Q. That is to say, when Mr. Schifrin completed this

he showed it to you? Is that right? A. I don't know if he showed it to me, but I became acquainted with it.

Q. Is it your testimony that the only evidence of contracting on this sheet is the \$179 figure for Irving Chaiken? A. That is correct.

Q. Did you hear Mr. Ginsberg say that Royal Fashion and Lou Waxman, among others, were his contractors during that period? A. I heard him say, Mr. Sabetta, that he camouflaged the bills from those people.

Q. Did you hear him say that these people were his contractors? A. I heard him say that, but I also heard him say what I just repeated.

Q. Did you hear Mr. Gold testify that he knew Royal (1657) Fashion to be a contractor during that period? A. I don't recall him saying that.

Q. You don't recall that? A. I don't recall that.

Q. If I told you he said that would that refresh your memory? A. I'm taking your word for it, Mr. Sabetta.

Q. Did you know that Royal Fashion or Lou Waxman were contractors during that period? A. No, I did not. I gather they were non-union firms.

Q. Say it again, please. A. I gathered at that time they were non-union firms.

Q. So at the very least, on the face of it would represent these purchases from Waxman, from Royal Fashions, the numerous entries here would represent violations of the contract to the extent that on their face they represented jobbing from non-union shops? Is that correct? A. Correct.

Q. Insofar as you know, no further inquiries were made of Royal Fashion or Lou Waxman to determine whether, in fact, this was jobbing or contracting? A. We have no access to the books of those firms because they are not under contract to us.

Q. Did you ever ask Mr. Gold to attempt to visit any

(1658) of those shops and inquire of them whether they worked for Daniel Furs during this period? A. I never asked them to visit those particular shops.

- Q. Do you know whether Mr. Gold ever did visit Royal Fashion and Lou Waxman during this period? A. I don't know.
- Q. Did you ever talk to Mr. Gold about the results of this book analysis and the firms listed thereon? A. I did not. May I explain why?
- Q. Mr. Hoff, why don't you tell us. A. I have had an opportunity on occasion to visit a non-union shop, contracting shop, and not just having a cup of tea. It's very difficult if it is a contracting shop, first, to make entry into the shop, to begin with, and, secondly, when entry is permitted, it is very difficult to elicit any information that will be harmful to the employer, to the owner of that shop. It is practically an impossibility.
- Q. Do you recall an incident in the summer of 1971 where the business agents were directed to out and request of the non-union contractors that they close down for the vacation period in August? A. Yes.
- Q. Do you recall whether that was successful or not? (1659) A. I believe it was successful.
- Q. Do you recall a similar incident in January and February of 1972 when Mr. Stofsky directed the business agents to go out again to non-union contractors—— A. I don't recall.
- Q. I have not finished the question. ——and request that they, too, close down during that period leading up and including the negotiation period for the new contract? A. Did you say it was the beginning of '71.
- Q. No, sir, '72. If I said '71, I am mistaken. January and February of '72. A. I don't recall such a direction by Mr. Stofsky.

Q. Well, do you know for a fact that the non-union contractors did close down during that period? A. Some may have.

Q. Is there any doubt in your mind about it? A. I

say may have.

Q. By some, how many do you mean? A. I don't have a number. I didn't take a census, but I say some may have closed down.

Q. Isn't it a fact that virtually all of them closed down at the request of the union business agents to do so? A. I don't know if that is a fact.

(1660)

Q. Isn't it a fact that the union sought to deprive union manufacturers of this non-union labor source during this period of negotiations? A. The union has always done as much as it possibly could with relation to contracting.

Q. Mr. Hoff, that is not the question. The question is whether with respect to this period of negotiation such a directive was made of these non-union shops? A. I thought you were referring to the union shops at this time.

Q. I am talking about visits by business agents of the union to the non-union contractors. A. There were some visits like that.

Q. As a matter of fact, you must have spoken to other business agents, didn't you, during that period of time? A. There were such visiting.

Q. You were on the negotiating committee for the union on this '72-'73 contract? A. Yes.

Q. You were aware of the union intentions to carry off such a policy to close these shops down? A. We attempted to convince them to shut down.

Q. And in a number of instances, quite a few, apparently, the business agents were successful? (1661) A. Some were.

Q. So at least on those occasions business agents apparently were either able to speak through a crack in the

door or get into the shop and talk to the shop owner of the non-union shop? A. I don't know how they made entry.

Q. So far as you know, they may have even sent telegrams to the owners of the non-union shops? A. I doubt it.

Q. There is no doubt in your mind, Mr. Hoff, that they made visits to those shops? A. I said they made some visits. I acknowledge that.

Q. As a matter of fact, the union, Mr. Stofsky said, knew where every one of these contractors were virtually? All of them, anyway? A. We do take surveys in our industry and we know how many employers are in each building and their names and how many workers they may have, union and non-union.

Q. That is true for the non-union shops also? A. I said union and non-union.

Q. Would you say in your experience of years as a business agent and as the assistant manager of the union that you have heard reports of business agents being admitted to the premises of contractors? (1662) A. There are many cases where they were.

Q. And that includes not only the showroom, but also the factory areas? A. Occasionally they have been.

Q. Do you remember Mr. Gold ever telling you of any such incident where he had visited a contractor's shop and was permitted to review the factory setup? A. Yes.

Q. Do you remember the list of firms that Mr. Glasser said he received payments from in his testimony? A. I remember his testimony.

Q. You remember my examination of Mr. Stofsky about the various fines throughout the period on the various firms? Do you recall that line of questioning? A. I request that you remind me of what you asked Mr. Stofsky, if that is what you are questioning me about.

Q. You remember, for example, I asked Mr. Stofsky about Chateau Creations and the filing of various complaints

against that firm for various periods and the ultimate disposition of those complaints? A. I don't recall the specific instance, but I recall you asking him about Chateau Creations.

Q. You recall I asked him about complaints filed in '67, '68, '69 and '70 and '71 and the disposition of (1663) those complaints? A. You may have asked him. I just don't recollect all the questions.

Q. Let me ask you then some of the same questions. Do you recall whether in '68 and '69 or '70 any complaints were filed against Chateau Creations? A. I would not know, Mr. Sabetta, without looking at some documents.

Q. Would you recall offhand that in '71, May of that year, complaints were filed which were never prosecuted? A. You will please have to tell me the nature of the complaints and the answer to the complaint.

Q. I am talking now only about complaints for contracting.

Mr. Rooney: What firm are we talking about?

Mr. Sabetta: Chateau Creations.

The Witness: Will you tell me the answer to his complaint and I will give you the answer.

Q. Have you undertaken to view the union treatment of any of those firms in your preparation for this trial? A. We have gone some of the background, yes.

Q. Is this one of the firms that you have reviewed in this respect? (1664) A. Yes.

Q. Do you recall that in September of 1971 Chateau Creations was fined \$2,500 and directed to ask for six people? A. I will accept your word about that.

Q. Do you have any recollection about that? A. No.

Q. Did you participate in formulating the figure which you would request of the impartial chairman for that

violation? A. I think it was a matter that was heard before the impartial chairman, that it wasn't a settlement. I am not certain, but I think so.

- Q. Do you remember whether you were the advocate or one of the advocates in the union on that occasion? A. I don't recall.
- Q. You don't recall what position the union took on that matter? A. It is a—may I go into some explanation about the question?
- Q. Well, I am asking you. A. I don't recall if I was involved in it.
- Q. Did you hear Mr. Lageoles testify yesterday that one of the reasons—not yesterday, but I think it was (1665) Friday—one of the reasons he didn't push the Chateau firm because it was a non-fur shop, it was a cloth pile shop? A. I recall that testimony.
- Q. And that he didn't want to push that firm because if pushed it might result in the loss of a few union jobs that were present? A. I recall what he said about it.
- Q. Do you know whether in '71 those considerations about fear for the loss of jobs also prompted the \$2,500 fine, plus the directive to add six people? Did you know whether that was reviewed in the union office to determine whether that would have a similar effect as described by Mr. Lageoles? A. I don't know if that was taken into consideration or not, but I do believe that the nature of the amount of contracting was probably the key factor related to the penalty against this firm.
- Q. You don't know whether the union was fearful of losing the Chateau Creations firm, losing union positions in '71? A. We have a peculiar problem related to all cloth shops under the contract to us. Most of the cloth shops that make what is called fake fur are under contract to the (1666) International Ladies Garment Union, and our union many years ago, about 20 years ago, did lose over 500

workers who went to work in those shops and are no longer our members, and the International Ladies Garment contracts are much less than the contracts of the Furriers Joint Council both in wages, in structure and in members.

Q. Mr. Hoff, would you normally be associated in the regular course of your duties with any action before the impartial chairman which resulted in a fine of more than \$2,000 and/or the suspension of the firm from the protection of the agreement? A .I just don't understand "ordinarily be associated with".

Q. Well, in those instances where a firm, let's say, was suspended from the protection of the contract, would you say that it would be within the normal course of its duties to be present and act as an advocate on those occasions for

the union? A. I would.

Q. That is a pretty serious penalty, is it not? A. A

suspension, yes.

Q. And in those cases where the fine imposed was more than \$2,000, would you say the same would be true in that you would have a role in that proceeding? (1667) A. I may have.

Q. Well, would it be normal for you to have such a role? A. Depends on if I was present on that particular occasion.

Can you tell me the date again?

Q. We are talking a lot of different firms, Mr. Hoff. The Chateau Creations firm, the disposition was September 8, 1971, but I have no reference to when it was actually There are many such instances occurring after argued. Mr. Glasser left the market.

Do you know that Sherman Bros. was fined \$2,500 and directed to add four workers in September of '71? A. Yes. I was involved in the settlement.

Q. You were present at that time. Was that argued before the impartial chairman? A. Yes, it was. was suspended from the collective labor agreement, and

during the suspension period while the workers were on strike we concluded a settlement.

- Q. During that period of time was any book analysis made of that firm? A. I believe there was.
- Q. Did that disclose evidence of contracting? A. Yes. (1668)
- Q. Do you know whether Sherman Bros. maintained more than one set of books? A. I am not sure at that time in '71.
 - Q. Your answer is you don't know? A. I don't know.
- Q. Do you know whether in '70 Corinna Furs maintained more than one set of books? A. I never had occasion to examine any set of books there.
- Q. Did you know whether Schwartzbaum Furs in '70 maintained more than one set of books? A. I don't know.
- Q. Now, Mr. Hoff, you testified that you met Mr. Glasser some time for the first time, I believe, in the '50s? A. About '56 or '7, I said.
- Q. And you also testified that he began to convey documents to you, a few pages each from time to time, I think you said, from '67 to '69? Is that correct? A. That is correct.
- Q. Tell us when for the first time he conveyed any such documents to you? A. I don't recall what month it was, but it was some time in the spring of 1969.

 (1669)
 - Q. 1969? A. I'm sorry, 1967.
- Q. Did you have a conversation which preceded that occurrence? A. Mr. Glasser approached me and offered me copies of this diary and asked me if I was interested, and I said I was.
- Q. Was any discussion had about the price to be paid?
 A. Not really.
- Q. When was that agreed upon? A. It was sort of a haphazard arrangement. On occasion he would say he

would need some money to go to the track, or he would need some pocket money, and I would give him, you know, a \$20 bill or fifteen dollars, and it was not a regular occurrence, in other words, every time he made a delivery of some papers did he get money. This was an occasional amount.

Q. Would you say that every disbursement made by the union is reflected in these various documents that have been admitted in evidence? Let me rephrase that. Is it your testimony that every disbursement made by the union within this relevant period as encompassed within all these documents are reflected in these various (1670) documents?

Mr. Rooney: The documents just referred to one month.

- Q. With respect to that month, or whatever it may be. When I say these documents, there are many of them here. But there are those that relate to the union accounts of various kinds at the various banks as you have testified to them? A. I believe so.
- Q. You believe so? A. I believe this covers all the disbursements.
- Q. In other words, there would be nothing that the union might have paid for during that period encompassed within those documents that would not be reflected in those documents? Is that correct? A. I would be unaware of anything beyond what is in those documents.
- Q. Is there any petty cash box kept at union headquarters, for instance, for marginal expenses of various kinds? A. There may be. I don't know of it. But there may be.
- Q. Well, if you incur expenses in the union's behalf, take a cab maybe, or some other expense, is there (1671) some way you can be reimbursed from that petty cash source? A. I would have to sign a voucher.

- Q. What would happen then? A. And that voucher would have to specify the purpose of whatever the moneys were for.
- Q. And then what? A. Then I would sign the voucher, it would be countersigned by a member of the management committe, and then it would be looked after by the finance committee of the union that usually meets on Mondays.
- Q. Assuming that the expense was properly incurred by you, would you be reimbursed ultimately? A. Yes.
 - Q. Who would reimburse you? A. The bookkeeper.
 - Q. In what form? A. She would give me the money.
- Q. Assuming it was an expense of say five or ten dollars, would she give you a check for that amount? A. No, she would give it to me in cash.
- Q. So based on that line of questioning would it be your best judgment that there must be some petty cash source that the bookkeeper has charge of for these purposes? A. Which purposes? (1672)
- Q. Of the kind we're just talking about, expenses incurred by various of the union officials and agents? A. Not every business agent or official puts in a petty cash voucher.
- Q. That is not my question, Mr. Hoff. A. There are petty cash vouchers.
- Q. There exist a cash supply which is controlled at least part time by the bookkeeper for the union? A. She disburses the amounts.
- Q. I will accept that amendment. She disburses the amounts that is properly certified by other people? A. Yes.
- Q. Now, will you tell us the source of the moneys that you paid Mr. Glasser according to your testimony from time to time for these various documents that he gave you? A. From my own pocket.
 - Q. You paid him out of your own pocket? A. Right.

Q. Is this also true for whatever odd dollars and cents that he incurred for the Xerox costs? A. I don't know. I don't think it was Xeroxing. He told me it was a photostat business. I don't know if he had a Xerox machine or some other method to photocopy.

(1673)

Q. He would give you, in effect, a bill of some kind almost? A. No. He would tell me it cost me \$1.25, or \$2.15, and I would give it back to him. He didn't have to give me a bill for that amount.

Q. This was on top of the \$15 and 20, whatever it was that you paid him; is that right? A. That's true.

Q. When for the first time did you discuss the amount of money you were to pay him for these documents? When for the first time did you discuss the amount of money you were to pay him for these documents? A. Some time during the first year.

Q. What was said on that occasion in that respect? A. He said he needs a few dollars, and I took out—I don't recall how big the denomination of the first bill was, whether it was \$10 or \$20, and I gave it to him and he was satisfied.

Q. Thereafter you employed a similar mechanism? A. Correct.

Q. When for the first time did you mention this to Mr. Stofsky? A. As soon as I received the first copy.

Q. That would have been early in 1967? (1674) A. Yes.

Q. What use did you make of that first copy, if any?

A. It was just information for us.

Q. Did you make use of any of the information? A. Well, we never know in advance what the text of the diaries would contain, of the pages. If you haven't examined it, there is even one—there are two typewritten pages that are stapled together that came from the diary, or the same source. It depended on the subject matter

that was related to the handwritten document. It was something for us to be made aware of, so to speak.

- Q. Well, you have had a chance to study those documents, haven't you? A. I reread them.
- Q. Isn't it a fact that most of those documents contain information about activities which happened in the past? A. Yes. No. When we received the information in '67, for example, we received it within a brief period of time after the entries were made.
- Q. You had a chance to study them, and isn't it a fact that most or many of the entries reflect meetings (1675) with union officials? A. Some did.
- Q. And purport to restate what a union official may have said and what the Association may have said? A. That's correct, or on particular subject matter, or a particular shop or a particular complaint on a shop.
- Q. Did the price you paid for this information ever vary according to the quality of the information or did you always pay the same flat rate? A. I would say the same flat rate.
- Q. Did you and Mr. Stofsky ever discuss whether you were committing any criminal acts by doing this? A. We did not.
- Q. Now, you said that Glasser came to you in 1970 after he had been fired; is that right? A. Yes.
- Q. Did you know why he had been fired? A. Yes. We learned through the Association, and through one of the manufacturers that was on the subcommittee where Glasser appeared and stated his case.
 - Q. Which manufacturer was that? A. Mr. Lou Spear.
- Q. Did you learn that Glasser had been receiving moneys from manufacturers or he was alleged to have been (1676) receiving money from manufacturers? A. Yes.
- Q. Did you ever ask Mr. Glasser what the purpose of the receipt of those moneys was? A. I did not.

- Q. Did you ever ask any of the manufacturers why they saw fit to pay Glasser money? A. I never spoke to those manufacturers.
- Q. Did you ever commence an investigation into whether any union official had been in any way involved in the receipt of those moneys with Glasser? A. We were told by the Association at some point that they had made an investigation which disclosed——
- Q. No. My question, Mr. Hoff, is did you make any investigation of union officials. A. I don't believe we did.
- Q. Were there any rumors that you recall that these moneys were going to union officials? A. Well, I can answer that in this way. I don't know whether you are referring to rumors within the union or within the market or in the cafeteria, but like many industries in a small area, there are rumors about all kinds of things.
- Q. In fact, there was a rumor in the case of Mr. (1677) Jaffee, isn't that right? You have heard Mr. Stofsky testify about that? A. There was.
- Q. And Mr. Stofsky has said that he had no evidence of facts to sustain that; isn't that right? A. That's correct.
- Q. Are you telling us now there were also rumors with respect to Mr. Glasser, that some of the moneys he may have been receiving were going to certain union officials? A. There may have been. I don't recall. Frankly, we don't pay attention to all rumors.
- Q. Only certain rumors, isn't that right? A. We only pay attention to facts.
- Q. In the case of Mr. Jaffee, apparently Mr. Stofsky paid attention to those rumors. Do you remember his testimony on that? A. I don't recall what he said. If you tell me, Mr. Sabetta, that he said he paid attention to rumors, I will take your word for it.
 - Q. Well, do you recall him testifying that he had no

evidence or facts to prove the allegations? A. I recall him saying that, yes.

Q. Do you also recall him stating that notwithstanding (1678) that fact, he sought to intervene to prevent Mr. Jaffee from getting a job with the Retailers Association? A. As a matter of fact, I agreed with him on that position.

Q. So, that was a case in which rumors were the foundation for certain union action; isn't that right? A. And we did take a union action in 1971, Mr. Sabetta, when the union——

Q. What are you talking about? I haven't asked you a question. I am asking you about Mr. Jaffee now. A. I am talking about Mr. Jaffee.

Q. Mr. Stofsky took certain action; isn't that right? A. Yes.

Q. Of the kind you described? A. Yes, and one other.

Q. What other? A. Mr. Jaffee didn't run for reelection in 1971.

Q. He did not run for reelection? A. Right.

Q. He retired some time in 1971? A. He retired in November and the election was in June.

Q. Of the same year? (1679) A. '71.

Q. Do you recall how old he was when he retired? A. I don't know.

Q. If I told you he was about 66, would it surprise you? A. It's possible he was.

Q. Now, you testified that Mr. Glasser came to you and after an emotional scene where he broke down, he then reversed himself and became very hard and threatening to you; isn't that right? A. Correct.

Q. He threatened to reveal your involvement in this matter of receipt of the documents; isn't that right? A. Yes.

Q. Did you have in mind at that time that you may be charged with the receipt of stolen property should

Glasser reveal all this? A. I didn't know that my receiving the information was a crime.

- Q. You didn't have in mind that it would be a crime?

 A. I didn't know that it was.
- Q. Did you seek to inquire of anyone whether it might be? (1680) A. I did not.
- Q. Did you think there was a possibility it might be a crime? A. I didn't know what Mr. Glasser might do at that time.
- Q. No. I am saying that if Mr. Glasser revealed what you say was the truth about this, would that in your mind have constituted a crime on your part? A. Frankly I was not aware that it might be a crime.
- Q. So you didn't entertain that at all? A. I don't believe I did.
- Q. Now, you say, however, that Mr. Glasser threatened to go to the Association and reveal these facts; is that right? A. Yes.
- Q. Did he mention to whom he would go? A. Mr. Greenberg or Mr. Hecht.
- Q. Mr. Greenberg or Mr. Hecht. He would tell them that he had been passing these documents to you; is that right? A. So he said.
- Q. Now, during the time he had passed these documents to you on the various occasions, was there anyone (1681) else present? A. No.
 - Q. Just the two of you? A. Yes.
- Q. When you handed him the money it was just the two of you present? A. Yes.
- Q. Now, you knew in '70 when Mr. Glasser approached you on this and threatened you that he had already been fired; didn't you? A. Yes.
- Q. Did you know that he had been denied his pension at that point? A. He told it to me.
 - Q. Did you know of anyone else aside from Mr. Glasser

who could have given any evidence of the transactions you described, the receipt and payment to those documents? It was only Mr. Glasser; is that right? A. That's right.

- Q. Did you have in mind at that time the strength that Mr. Glasser's word might have with Mr. Greenberg and Mr. Hecht who had just played some role in having him fired for receiving moneys from a manufacturer? A. I'm not too sure how to answer your question, (1682) whether it requires a yes or no or an explanation.
- Q. Well, it's harder than a yes or no answer. Let me reframe it. Did you, in assaying what you ought to do in response to Mr. Glasser, make any judgment about whether or not his words to Mr. Hecht and Mr. Greenberg about your supposed involvement in this would have any weight and effect? A. I don't know whether it would have weight or not, but I didn't want to do anything that might hurt our relationship with these parties.
- Q. So, you felt that notwithstanding the fact that Glasser had been fired for receiving these moneys, that the union—rather, that the Association, someone there might credit his word and as a result of that impair the relationship of the union to the Association? A. Of course, I was not a mindreader and I could not tell in advance what they may or may not have done, but I didn't want to take any risk that might in any form harm our relationships.
- Q. So, as a consequence, you phoned a friend to seek out a lawyer for Mr. Glasser; is that right? A. Yes.
- Q. What friend did you phone? (1683) A. You want his name?
 - Q. Yes. A. A man named Morris Schwab.
- Q. He suggested the name Mr. Anolik to you; is that right? A. Yes.
- Q. When you went to Mr. Anolik's office, did you at any time during that meeting say to Mr. Anolik that Mr. Glasser was a very long time friend of yours and that you

would do anything that you could to help him? A. I may have said that.

Q. Is it your testimony that basically you spelled out the facts and circumstances to Mr. Anolik? A. He asked me to do that. Mr. Glasser asked me to do that.

Q. Do you remember Mr. Anolik testifying that basically it was Mr. Glasser who played that role during the meeting? A. I don't recall.

Q. You don't recall. Did you tell Mr. Anolik that Mr. Glasser had been fired for allegedly the receipt of moneys—A. I don't think we discussed that matter with Mr. Anolik. (1684)

Q. Do you remember Mr. Anolik testifying that there was a discussion about the receipt of moneys by Mr. Glasser from Sherman Brothers?

Mr. Rooney: Excuse me, your Honor. If we are going to have any inquiry into this, may the witness be shown the record?

The Court: Yes.

Mr. Sabetta: What record is that?

Mr. Rooney: The transcript of the trial.

Mr. Sabetta: I am asking him now whether he has any independent recollection.

The Witness: I don't recall.

Mr. Rooney: I object on that basis.

The Court: He said he doesn't recall.

Q. You don't recall that testimony? A. No.

Q. But your best recollection now is that no mention was made of these moneys? A. I don't recall, Mr. Sabetta, whether mention was made. It was not made by myself. If Mr. Glasser said it, I don't recall him saying it.

Q. So, your testimony—tell us what you said to Mr. Anolik in explaining this problem. Did you tell him that Mr. Glasser had been fired? (1685) A. Yes.

- Q. Didn't he ask for what? A. If he did, I didn't answer that question. I left it to Mr. Glasser to get into that. I don't know.
- Q. Did Mr. Glasser answer? A. I don't know if Mr. Anolik asked why he was fired.
- Q. Did you hear his testimony in court that he did? A. As I said, I don't recall it.
 - Q. That doesn't refresh your recollection? A. No.
- Q. What did you say in explaining Mr. Glasser's problem? A. I told Mr. Anolik that this man, meaning Glasser, was fired from his job after some 30-odd years of employment, that he had been a participant in an Associated pension program; that he had deposited approximately \$5000 of his own money in that program and now on his discharge was told by his employer that he would not be able to receive whatever Glasser claimed he was entitled under the terms of the pension program and I asked Mr. Anolik to intervene on his behalf.
- Q. Did you ever question Mr. Glasser about why he took those moneys from manufacturers? (1686) A. I did not.
 - Q. Did you ever ask him if the charges were true? A. No.
- Q. You didn't inquire about that at all? A. No, I did not.
- Q. Did Mr. Glasser ever ask you or anyone else to pay for the services of this lawyer? A. No.
 - Q. You never did? A. No.
- Q. Incidentally, with respect to the moneys that you paid him for the cost of photocopying—A. Yes.
- Q. Did he make a request of you for those moneys or did you simply offer them gratuitously? A. He said he wanted to get some pocket money.
- Q. Now, when Mr. Anolik said the fee will be \$2000 if successful, Mr. Glasser never thereafter sought your assistance in paying that; is that correct? A. Well, he didn't pay him on the first visit.

Q. My question is not when he paid him. My question is whether he sought your assistance in making that payment. A. I don't think he did.

(1687)

Q. It never came up between you so far as you can recollect? A. I don't believe so.

Q. You said you went back to Mr. Anolik's office the second time in the early part of the next year; is that right? A. Yes.

Q. What was the purpose of that visit? A. Again, this was another request by Glasser for me to accompany him. This time he was supposed to have brought with him a copy of the pension agreement. I think it might be called a pension trust agreement with the Associated and himself. Mr. Anolik was to study and see what could be done according to the rules.

Q. What was to be your function at this second meeting? A. Only for me to go with him and to stay a very short time, which is what happened.

Q. You were just there metaphorically to hold his hand; is that right?

Mr. Rooney: I object, your Honor.

The Court: Sustained.

Q. Did you meet with Mr. Glasser at all in 1972, in the early spring? (1688) A. I did not.

Q. You never met with him at the New Yorker Hotel?

Q. You never met with him at the New York Hilton?
A. No.

Q. You never talked to him by phone or otherwise during that period? A. In the spring of '72?

Q. Yes. A. I never called him in the spring of '72 or any time after that.

Q. You never called him? A. Right.

- Q. I am asking you whether he ever called you or spoke to you. A. I don't recall if he called me.
 - Q. You have no recollection? A. No.
- Q. When, so far as your memory recalls, was the last time you ever spoke to Mr. Glasser? A. When I left him at Mr. Anolik's office.
 - Q. That was the last such occasion? A. Right.
- Q. Incidentally, was Mr. Stofsky ever present when (1689) Mr. Glasser spoke to you about these documents he was, according to your testimony, taking from the Association? A. When he gave them to me?
- Q. Well, you said earlier, I think, that no one else was present on those occasions. A. That' right.
- Q. Did you ever have a discussion with Mr. Glasser about the documents when Mr. Stofsky was present? A. No.
- Q. Did Mr. Stofsky ever tell you that he was going to meet with Mr. Glasser on April 4, 1972? A. I wasn't in New York at the time.
- Q. You weren't in New York before? A. No. I left the latter part of March. I don't recall the exact date, but it was the latter part of March of 1972 for a trip to Florida.
 - Q. When did you come back? A. I think it was April 7.
 - Q. The 7th? A. Yes.
- Q. On your return, did you ever discuss with Mr. Stofsky a meeting he had had with Mr. Glasser? A. He told me about that meeting.
- Q. What did he tell you about it? (1690) A. He told me what he testified during this trial; that he had met with Mr. Glasser at Glasser's request; Glasser asked Mr. Stofsky to hep him get an attorney.
- Q. Do you recall whether Mr. Stofsky told you that Glasser had asked him to pay for the attorney A. There was no such conversation from Mr. Stofsky to me.

Q. Did Mr. Stofsky tell you why he even had been interested in talking to Mr. Glasser? A. Mr. Glasser called him, he told me, at the Association office and requested that Mr. Hecht and he meet with Glasser.

Q. Did Mr. Stofsky, my question is, ever tell you why he honored that request; what interest he had in talking to Mr. Glasser? A. I don't beieve we got into that aspect of the conversation.

Redirect Examination by Mr. Rooney:

Q. Mr. Hoff, were you asked about Mr. Katcher? A. Yes.

Q. The question was did you have lunch with Mr. (1691) Katcher during any of the periods that we have been discussing. A. I may have had lunch with Mr. Katcher. I believe I did.

Q. You believe you did? A. Yes.

Q. May the record reflect I am showing you Government's Exhibits 62 and 63. Would you examine those, please. A. Yes.

Q. You were also asked about other complaints filed against Grossman in August of '69 and September of '70. You recall that? A. Yes.

Q. These two exhibits refer to Mr. Grossman's company, do they not, the '62 and '63? A. Yes.

Q. Can you tell us why—— A. '69 and '70?

Q. Yes, the years. Can you tell us why these two complaints and the other two compaints in '69 and '70 were not prosecuted successfuly? A. We had not sufficient evidence to take these (1692) matters before the impartial machinery.

Q. You have got to keep your voice up, please. A. Yes.

Q. Why was it that these complaints were even filed

against Mr. Grossman? A. Because we intended, and we continued over the years, to bring to Mr. Grossman's attention that the union was looking out to see that he should not continue in any contracting operation. Call it a form of reminder or anything else related to the contracting aspect as we suspected Grossman was engaged in.

Q. And there were other complaints filed against other employers who were suspected of doing business with contractors during this period, were there not? A. Yes.

Q. Were all those complaints successfully prosecuted? A. Only if we had information about it. If we had information, then they were taken before the impartial machinery. If we lacked information, then the matter was dropped.

Q. Now, you were asked about why you didn't go after Grossman's books after he joined Richton in 1971. Do you recall that? A. Yes. (1693)

Q. Why didn't you go after his books in 1971? A. Hopefully we believed that Mr. Grossman now as becoming a new kind of individual. He was now part of a public company. We hoped that his image was changing. That's why we began to speak to him at the latter part of that year, to convince him that he should take up more workers.

Q. Well, were you interested in more than just the books? A. We were interested in getting more workers in the shop.

Q. Was that the union's prime interest, more workers? A. This was our program at all times with Grossman and everyone else.

Q. Do you recall in 1973 your testimony that it took you four months to get these books from Mr. Grossman? A. Yes.

Q. Do you recall testifying that you had to go into

Federal Court to get a judge to order those books, do

you recall that? A. Yes.

Q. After the Federal Judge ordered the production of those books, did Mr. Grossman produce the books? A. It took a while after that.

(1694)

Q. Did he produce the books? A. He finally produced them.

Q. How many months did it take for him to produce the books after he was ordered by the Federal Judge to produce them? Approximately. A. About three months.

Q. Do you recall the excuses that he gave the union for not producing the books in '73? A. He told us he was sick; that his accountant was away; that his books were being ordered by IRS; that they were in the hands of Mr. Hinckley. He gave us all kinds of excuses.

Q. You were asked by Mr. Sabetta about Chateau Creations just a moment ago. You recall that? A. Yes.

Q. Do you recall Mr. Sabetta asking you some questions about Chateau Creations in 1971? A. Yes.

Q. Do you recall previous testimony that there were non-union workers at Chateau Creations? A. Yes.

Q. Did there come a time when those non-union workers were unionized and made members of the Furriers Joint Council? (1695) A. Yes. There was such a time.

Q. Do you know what year that took place? A. I think it was in 1970 or '71.

Mr. Rooney: May we have this marked, please, your Honor, for identification.

(Defendants' Exhibit AS was marked for identification.)

Mr. Rooney: Let the record reflect that I am showing Mr. Hoff AS for identification and asking

him if this document refreshes his recollection with respect to the month and the year that these workers were unionized.

A. They were unionized October 1970.

Q. You were also asked about Mr. Jaffee. You said he retired when he was about 66; is that right? A. Yes.

Q. How old was Mr. Willena when he retired?

Mr. Sabetta: I object to that, your Honor. It's completely irrelevant.

The Court: Sustained.

Q. Have there been any business agents who retired after the age of 66? A. Yes.

Q. About how many, do you recall?

Mr. Sabetta: I object to this, again, as (1696) irrelevant. your Honor.

The Court: Sustained.

Q. A business agent is an elected position at the union, isn't it? A. Yes.

Q. Now, you were asked about petty cash. Do you recall that? A. Yes.

Q. Now, is it a fact that a petty cash box is kept at the union or not? A. I really don't. I have never seen one.

Q. Where does the lady get the cash that she gives to you? A. Yes. I'm sorry. You did remind me. There is a little tin box where she has some cash.

Q. You were reimbursed for these Glasser expenses; is that correct, in connection with Defendants' Exhibit G? A. Only occasionally.

Colloquy

Q. On those occasions, did you put in petty cash vouchers? A. I did.

Q. Were you paid back in cash by this lady on those occasions? A. Yes. (1697)

Q. Do you know where she got this money from? A. From the petty cash box.

(1701) * * *

Mr. Sabetta: I had one thought in that regard. I think it would be improper for either side to (1702) argue anything with respect to the appearance or non-appearance of any of the manufacturers who are under indictment and whose names have been mentioned by Mr. Glasser, because both counsel recognize that these individuals who would have had the right to invoke the Fifth Amendment and virtually or certainly would have invoked the Fifth had they been called at this trial.

Mr. Abramowitz: I object strenuously. They could have been granted immunity like other people and especially under the new use immunity could have been granted use immunity and the testimony that they had given at this trial could not have been used against them at their subsequent trial! I think it's very significant and I do intend to raise the point in my summation that the only manufacturer they heard from on the Glasser situation was Mr. Ginsberg. The use immunity provisions were put in, in part, just for this, that you don't have to give a person transactional immunity in order to get his testimony either at the grand jury or at trial. but the Government certainly was free to grant these people use immunity.

Colloguy

Now, I am not going to argue that fact to the jury, but I think I am free to argue that these manufacturers are not here and they weren't available to be (1703) cross-examined.

The Court: Mr. Sabetta?

Mr. Sabetta: Your Honor, then I think the Government should be entitled to put in evidence the indictment naming the manufacturers as defendants, telling the jury they were not called because they weren't really available to the Government.

The Court: What about the use immunity that could have been granted?

Mr. Sabetta: Mr. Abramowitz notes it is available. It doesn't mean it is a practical available in this circumstance. I haven't myself investigated that possibility, but the Government then must show at a later trial beyond a reasonable doubt that the evidence is offering at that subsequent trial is in no way related to this evidence at this trial and that sometimes is a very great burden. It is a burden the Government can choose not to raise for itself by not calling those people.

The Court: That's a practical problem that you face as prosecutor. It does seem to me that Mr. Abramowitz is entitled to argue the point, however, that they only heard from whatever—

Mr. Abramowitz: Ginsberg.

The Court: Ginsberg. (1704) You would counter that the others are under indictment and could have claimed defense and he replies to that, well, you could have undertaken to get them use immunity.

Colloquy

Mr. Abramowitz: Excuse me, your Honor. I don't intend to argue that the Government should have given them immunity.

The Court: I understand. That's just between us. Mr. Abramowitz: Yes.

Mr. Sabetta: I would have very strong opposition to Mr. Abramowitz being able to argue that we didn't call him without the jury also knowing that they are under indictment. It seems to me that it would give the jury a very distorted picture of what the facts are here if they knew only that they hadn't been called as is obvious from the transcript without also knowing they had been indicted and that raises certain problems. I don't think it's fair to say that these defendants are equally available to both sides or that they are available to the Government at all.

Mr. Abramowitz: It happens in law that these particular people are more available to the Government because the defendants do not have the power to grant people (1705) immunity. Now, I am not going to argue that they should have given them immunity, but I am going to argue that the only person they heard from was Mr. Ginsberg and Schwartzbaum wasn't here for cross-examination as to his intent. We only had Glasser's hearsay testimony. I am not going to give you my summation now, but the point is that the Government—there were more available to the Government. I am not going to argue that, but as a matter of law they were more available to the Government than they were to the defense.

The Court: I will grant the cumulative testimony request and deny the witness equally available request.

Colloquy

Mr. Abramowitz: Your Honor, can I just inquire as to in substance what the cumulative testimony request is? It's not spelled out here. Just in substance. I don't want the exact wording.

The Court: We will give the customary cumulative evidence charge.

Mr. Abramowitz: Your Honor, I don't mean to press the point, but----

The Court: I don't have a copy of that with me now. I will give it to you in the morning.

Mr. Abramowitz: I'm interested as to what that says.

(1706)

The Court: All right.

Mr. Sabetta: Your Honor, do I understand, then, that the jury will not be allowed to know that these other four manufacturers are under indictment for whatever weight—

The Court: I will continue to ponder that overnight, but it seems to me that the only one in the position to call them, under all the circumstances here, would be the Government, however difficult it might be for the Government. In other words, by virtue of having the opportunity available to you, if for whatever reasons you don't wish to avail yourself of them, the difficulty that it presents or any number of other different reasons, then that means that you have to pay a price, it seems to me, for having the opportunity. I don't think they have any opportunity that's equivalent.

Mr. Sabetta: Isn't it true that they could have called these manufacturers and if the manufacturers claimed that they are innocent, as they do by their

Colloguy

pleas of not guilty, that the defendants are required to put them to the test of invoking their Fifth Amendment to establish to a certainty that they would do so?

Mr. Abramowitz: That is absolutely improper to do that, your Honor.

The Court: I don't think it's—first of all, (1707) if you know that a witness is going to take the Fifth, it would be improper to call him normally.

Mr. Abramowitz: Excuse me, your Honor-

The Court: Before the jury.

Mr. Abramowitz: I can say to your Honor that in preparation for this trial I have spoken to each of the attorneys who represent those manufacturers that we are talking about and they all indicated to me that they would take the Fifth Amendment and Mr. Sabetta well knows that I cannot call a witness in front of a jury to take the Fifth Amendment.

Mr. Sabetta: I know that, but you can call them out of the presence of the jury. I too spoke to each of their representatives and they too told me that they would invoke the Fifth Amendment if called by the Government. Your Honor is saying we have an additional vehicle at our disposal, which is true, but I think the jury ought to know that the manufacturers are under indictment and it may raise substantial problems for the Government to call them at this trial.

The Court: What bothers me about doing that—you see, if we didn't have the use immunity factor in the picture, I think that might—there might be some way that that could be done, but in order to allow

Colloquy

that to occur (1708) I think we are off and running into a whole big thing about immunity—they could have been called, but for the fact that they are under indictment and then they might have pleaded, but on the other hand immunity could have been granted, in which event they would have had—really, to go down that path is just, to me, apt to confuse the jury in a situation where the charge is already going to be difficult enough to understand.

Now, I will think about it overnight. You give it some thought. I think, Mr. Sabetta, that there is no getting around the fact that the trump cards are in your hand in that respect, whether you choose to play them or not and not in the hand of the defendant.

Mr. Sabetta: I would be happy-

The Court: It's a heavy play, but-

Mr. Sabetta: I can live happily with an instruction to the jury that the Government had this available, but chose not to, obviously, use it so long as they know that the manufacturers were under indictment. They can draw whatever inference from the failure of the Government, if that's what they choose to call it, to make use of the use immunity provision.

The Court: I will ponder that.

Mr. Abramowitz: If the jury found out these (1709) people were indicted, I will be forced to argue that they could have been given immunity for their testimony.

The Court: Yes, that has to be considered. Let me think about it.

Colloguy

(1727) * *

The Court: All right. Next, Government request for cumulative evidence and missing witness charge. Mr. Abramowitz has indicated that he wishes to argue, or at least comment in his closing statement, about the missing manufacturers as witnesses. (1728) Mr. Sabetta has indicated that he would think that it would be appropriate to indicate that those manufacturers are under indictment. Mr. Abramowitz in turn asserts that even though they are under indictment, that under the Act in question the government has the power, if it chooses to invoke it, to grant immunity. I have given the matter considerable thought and I have concluded that Mr. Abramowitz must be permitted to comment, if he chooses to, on the absence of these manufacturers and, further, Mr. Sabetta, I will not be able to permit you to refer to the indictment.

Mr. Abramowitz, you may not discuss the fact that the government could have given immunity. You indicated last evening that—

Mr. Abramowitz: I would not do so.

The Court: You would keep it very tight.

Mr. Abramowitz: I would relate it to the burden, but not immunity at all.

The Court: While I am indicating that you can refer to it, I would suggest that you be a little circumspect about it. Don't sock it to him because it is a tough question. All right, now, I will charge cumulative testimony.

Mr. Abramowitz: Your Honor, I just have to say I intend to sock it to him, but—

The Court: All right.

(1749)

Redirect Examination (Continued) by Mr. Rooney:

- Q. You recall yesterday there were certain questions asked about Mr. Steil? A. Yes.
 - Q. And also about Mr. Lust? A. Yes.
- Q. Was Mr. Lust a member of the Association? A. No, he was an independent firm.
- Q. How about Mr. Stiel, was he a member of the Association? A. Mr. Steil was a member and still is, I believe.
- Q. And there was testimony that Mr. Lust was fined \$750? Do you recall? A. Yes.
- Q. There was also testimony that he was fined this amount for about \$85 in contracting? A. I heard that.
 - Q. Is that right or wrong? A. That is incorrect.
- Q. How much contracting was involved with Mr. Lust? A. The record shows that he had about \$160 worth of contracting on four or five occasions with four firms.
- Q. And Mr. Lust as a result of that contracting (1750) reached a settlement with the union, did he not? A. He did.
- Q. Was that settlement embodied in any particular document? A. It was in a release that he signed together with Mr. Wolliner.

Mr. Rooney: May the record reflect that I am showing Mr. Hoff Government's Exhibit 40 for identification.

- Q. I ask you if you can identify that. A. This is the release that Mr. Lust was given and also the union should have a copy of it.
- Q. Would this be the type of document that would be kept in the ordinary course of official business at the union? A. It would.
 - Q. Would it be in the ordinary course of official busi-

ness at the union to keep such a document? A. Yes, it would.

Mr. Rooney: I am showing this to Mr. Sabetta, if your Honor please.

Mr. Sabetta: We have no objection.

The Court: Received.

Mr. Rooney: For the purposes of clarity, maybe we ought to have it marked as a defendants' exhibit.

(1751)

(Government's Exhibit 40 for identification marked in evidence as Defendants' Exhibit AT.)

Q. Mr. Hoff, you were also shown a number of documents—I think they were Government's Exhibits 16, 17, 18 and 19. Do you recall that? A. What firm are they related to?

Q. With respect to Mr. Stiel? A. Yes.

Mr. Rooney: Your Honor, I think we need those exhibits to show to the witness.

Q. I am showing you Government's Exhibits 16, 17 and 18, and they all relate to Mr. Steil, do they not? A. They do.

Q. Do they all relate to the same contracting incident?

A. They do.

Q. Government's Exhibit 16 in evidence was filed in about March, was it? A. March 29.

Q. How about 17 and 18? What dates were they filed? A. April 25, 1968 and May 14, 1968.

Q. They were all filed by what business agent? A. By Mr. Wolliner. (1752)

Q. Now, were these complaints on this contracting inci-

dent successfully prosecuted against Mr. Stiel? A. They were not.

- Q. Do you know why? A. There was insufficient evidence to prosecute. That is the reason.
- Q. It is your testimony that there was sufficient evidence to prosecute Mr. Lust? A. There was.
- Q. I direct your attention to Government's Exhibit 19 in evidence. What business agent filed that complaint? A. Mr. Wolliner.
 - Q. When was that? A. December 3, 1968.
- Q. Did Mr. Steil make any comment with respect to that complaint? A. The answer says that the firm denies giving out finishing centracting.
- Q. Was that complaint successfully prosecuted? A. It was not.
- Q. Why not? A. There was insufficient evidence to bring this before the impartial chairman.
- Q. You were asked questions by Mr. Sabetta about (1753) Mr. Anolik. Do you remember those questions? A. I do.
- Q. My question is, directing your attenion to your first meeting with Mr. Anolik, do you recall who on that occasion told Mr. Anolik about Mr. Glasser leaving the Association? Was it you or Mr. Glasser? A. I refreshed my memory about that incident and I recall specifically that Mr. Glasser told Mr. Anolik that he had retired.
 - Q. So it was Mr. Glasser? A. It was.
- Q. By the way, you were asked by Mr. Sabetta whether you had reviewed any document in this case before testifying. Do you recall that? A. I reviewed many documents.
- Q. Do you have any idea how many? A. Hundreds of documents.
- Q. Did you commit any one of those documents to memory? A. I did not.

Mr. Rooney: May this be marked for identification, please.

(Defendants' Exhibit AU was marked for identification.)

(1754)

- Q. You were asked yesterday, do you recall, Mr. Hoff, about a list that was made out after Grossman's books were finally examined in late 1973. Do you recall that? A. I remember that.
- Q. Do you recall being asked about the location of such a list? A. Yes.
 - Q. Is there such a list? A. There is.
- Q. I show you AU for identification and ask you if you can identify AU for identification. A. Yes, this is the report that we presented before the impartial chairman regarding the contracting case.
- Q. Do you know whether that list had been supplied to the Government before? A. I don't know.
- Q. You were asked questions about what directions, if any, you gave to Mr. Gold about Mr. Grossman. Do you recall that question yesterday? A. I do.
- Q. Did you, in fact, give any directions about Mr. Grossman to Mr. Gold? A. It was not necessary to give instructions to (1755) Mr. Gold, because Mr. Gold—

Mr. Sabetta: That is not the question; it is not responsive. I object.

The Court: Sustained.

- Q. Did you give any directions to Mr. Gold? A. No, I did not.
- Q. You started to say that there was another method employed to cope with the Grossman contracting. Do you recall that? A. Yes.
- Q. Do you recall that Mr. Sabetta did not wish you to answer that question?

Mr. Sabetta: I object to the form of that question.

The Court: The jury will disregard that. Objections are the name of the game in the trial of a criminal case. Each side has a perfect right to make objections when they deem it appropriate. So disregard that comment.

- Q. Was there another method you employed with regard to Grossman? A. There was.
- Q. What was the other method? A. On two occasions I visited together with a group (1756) of business agents from the union the contracting shops where we suspected Mr. Grossman was giving work to.
- Q. Do you recall the name of either of those shops? A. Yes. One firm was M & R, at 236 West 30th Street.
- Q. Do you recall the other firm? A. I don't remember the other firm.
- Q. What happened when you went up to M & R? A. Well, we did get entry into the factory, and one the Greek-speaking business agents who was with us spoke to the employers and to two workers who were there to try to elicit any information regarding Mr. Grossman and his operation, and that was refused. We tried to make a search, an unauthorized search, if I may say.
- Q. Just tell us what happened, Mr. Hoff. A. We tried to make a search for any material that would connect this company, this contractor to Grossman.
- Q. Were you successful in this search? A. We were not successful. As a matter of fact, we were there for a long period of time and at one point the police appeared on the scene and ushered us out.
- Q. You were asked about visits made by the union to contractors in the summer of '71. Do you recall that? (1757) A. Yes.

Q. And contractors, or some contractors were visited during that period? Is that correct? A. Yes, they were.

Q. What was the purpose of those visits in the summer of '71? A. I believe this was the first industry vacation closing that was supposed to take place, and that did take place the last two weeks of July of that year, and prior to the closing for vacation the contracting shops were visited and asked to close down for vacation purposes.

Q. Was this the situation when the entire industry was closing down? A. All the manufacturing shops, all the firms under contracts to the Furriers Joint Council.

Q. During those occasions were the books and records of 'he contractors requested by anybody in the union to your knowledge? A. There were such request to some shops.

Q. Were any books and records obtained? A. None at all.

Q. How about early in 1972? Were certain contractors contacted during that period by the union? A. Yes. (1758)

Q. And for what purpose? A. This was during the negotiations that were taking place between the union and the various associations regarding an industrywide collective contract, and these firms were being visited and requested to close down during the period of negotiations.

Q. Do you know for a fact whether any of these contractors did close down? A. Some did.

Q. During this visit or these visits by the union were any of the books and records of the contractors given by them to the union? A. None.

Q. Were they requested? A. On some occasions.

Q. You were asked yesterday about the payments that you made to Glasser. Do you recall that? A. Yes. (1759)

Q. You testified that on certain occasions you did put

in for reimbursement to the union. Do you recall that? A. Yes.

Q. How were you reimbursed by the union, can you tell us that? A. I would tell the office manager to add \$15 or \$20 for that week to the organization expenses for the week and then I would be given the amount of money by the bookkeeper.

Mr. Rooney: May this be marked as a defense exhibit for identification, please.

(Defendants' Exhibit AV marked for identification.)

- Q. Mr. Hoff, let the record reflect I am showing you AV for identification and asking you if you can identify that. A. I can.
- Q. What do you identify it as? A. This is a photocopy of an invoice from a travel agency for my wife and myself for a trip to Fort Lauderdale March 29, 1972, and a return trip April 7, 1972.

(1760) * * *

Recross-examination by Mr. Sabetta:

- Q. Mr. Hoff, yesterday you testified that it required a federal court order to get Mr. Grossman's books in 1973. Do you recall that? A. I recall what I said about that. I said that we (1761) had to go to court to enforce an order from the impartial chairman.
- Q. You went to the federal court to do that? A. Yes. I believe so.
- Q. Do you know whether Mr. Grossman or his firm was a party to this action that you are referring to in the federal court? A. I don't know.
- Q. Isn't it a fact, Mr. Hoff, that the federal court proceeding you are talking about in 1973 was a result of the

fact that the government had subpoenaed Mr. Grossman's books in connection with the federal grand jury investigation into the operation of the fur industry and more specifically the Furriers Joint Council beginning early in '72? A. It might have.

Q. Isn't it a fact that Mr. Grossman and his firm were not parties at all to the federal matter that you are referring to which led to the receipt of the books you have indicated by the union in early or mid-1972? A. I do know, Mr. Sabetta—

Q. Well, can you answer that question and then you can tell us what else you know. A. I don't know if they

were a party to that action.

Q. Do you know that the books were actually in the (1762) hands of the office of the Strike Force and Mr. Hinckley who were conducting that investigation? A. Yes. We were told that at the hearing by Mr. Field, Mr. Grossman's attorney, who, if I may continue, also told us.

Q. I am asking you now—I don't want to know what Mr. Field told you, because that's hearsay. I want to know whether you knew that the books were actually in the hands of the Strike Force. A. I didn't know it directly.

Q. Did there come a time when in act the union at-

tained those books? A. Yes.

Q. Do you know where they attained them from? A. I

believe from Mr. Hinckley's office.

Q. Mr. Rooney has asked you some questions about Mr. Steil and Mr. Lust this morning. Do you recall those questions a few minutes ago? A. Yes.

Q. You told him that the Lust fine of \$750 related to four or five occasions of contracting werk for four firms amounting to \$1,600. Do you recall that testimony? A. Yes, I do.

Q. Is that knowledge that you have an acquired as a result of some direct involvement in the resolution of (1763) those disputes? A. No. That's knowledge I acquired after

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searching our records yesterday—last night upon our return from the courtroom.

Q. Yesterday you didn't have any knowledge about that matter; is that right? A. I did not.

Q. In fact you said that your best recollection was that you didn't even participate in those matters; is that right? A. That's correct.

Q. Do you have the complaints that were filed against Mr. Lust involving those four or five separate matters? A. We don't have the complaints. We have a document in Mr. Wolliner's handwriting.

Q. What kind of document was that? A. It's a document related to this particular case with Mr. Lust.

Q. May I see that document? A. I believe our attorney has that document.

Mr. Rooney: I will be happy to show it to Mr. Sabetta. I just don't know where it is. If I can ask the witness, maybe he can help show me.

Mr. Sabetta: I will be happy to have him step (1764) down if that will help.

The Court: Yes. Step down. (Witness steps down off the stand.) (Witness resumes stand.)

Mr. Sabetta: May we have this marked as the next government exhibit? (Government Exhibit 65 marked for identification.)

Q. Now, you recognize the handwriting of Mr. Wolliner? A. Yes.

Q. On this document is there any reference to Mr. Steil and his firm? A. There was one reference here—two references that I see.

Q. Two references to Mr. Steil? A. Yes.

Q. Is it your understanding of this document that it

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reflects contracting done by Mr. Lust? A. Not related to Mr. Steil.

- Q. Not related to Mr. Steil? A. That's right.
- Q. Which are the items of contracting? A. Every one below this line up here (indicating).
- Q. What are the items reflecting Mr. Steil's name? A. I read it, "Sold to Walt Steil"—I can't make (1765) out that name—"30/20 parkas number 513. Walt Steil—" there is a 1-skirt number 450.
- Q. Now, at the time this took place, did you have any conversation with Mr. Wolliner about his investigation? A. I did not.
- Q. You never discussed with him the complaint filed against Mr. Steil regarding the contracting performed for him by Mr. Lust; is that right? A. I did not.
- Q. Yesterday I asked you about the resolution of the complaints 16 through 19. Am I correct in saying that at that time you told us you didn't know why they had not been prosecuted? A. I am not sure whether I said that or not, Mr. Sabetta.
- Q. Have you had occasion since that time to review the files of the Furriers Joint Council and thereby determine that the evidence on all four of those matters was insufficient? A. Yes.
- Q. Can you tell us what records those are? A. I looked for a report, because one of the complaints says books to be examined and there is no report in our files.
- Q. There is no report of a book examination; is that (1766) right? A. Yes.
- Q. Do you know whether any book examination was ever performed? A. I don't know, but since it is on the complaint, I have to assume that there was such an examination, but we don't have one.
- Q. Your inference is that there was an examination but that you have no documents as a result of it? A. One

Colloguy

of the complaint that you showed me yesterday, and among those that I saw this morning, answers books to be an amined.

- Q. But there are no documents in your files? A. There arent' any to support that.
- Q. Are notations made and never carried out by the union? A. It's possible. It would be rare, but it's possible.
- Q. Who would make the judgment not to go forward with that book investigation? A. The business agent.
- Q. Would he ever confer with you in making that judgment? A. Occasionally.
- Q. Do you recall whether in the instance of the four (1767) separate items marked 16 through 19 Mr. Wolliner ever sought your advice and counsel as to how to proceed? A. I have no recollection of any discussion with Mr. Wolliner regarding these matters.
- Q. So, when you say under oath here this morning that as to those matters, 16 through 19, the evidence was insufficient, that conclusion is based on your discovery that no book examination was ever done of Mr. Steil as outlined in Mr. Wolliner's exhibit; is that correct? A. That is correct.

Mr. Abramowitz: Your Honor, pursuant to Rule 27 of the Federal Rules of Criminal Procedure dealing with the certification of court records and other public documents, the defendants offer Defendants' Exhibits AM and AN, both dealing with the estate of Mayer Fenster and Fanny Fenster on file with the Surrogate's Court, County of Bronx, and Defendants' Exhibit AO for identification, which is a certified copy of the death certificate of one Benjamin Sherman.

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(1768)

Mr. Sabetta: No objection, your Honor.

The Court: Received.

(Defendants' Exhibits AM, AN and AO received in evidence.)

Mr. Abramowitz: Your Honor, may I have permission to just read portion of these exhibits to the jury, not all of them?

The Court: Do you want to confer with counsel on that?

Mr. Sabetta: I have no objection if counsel reads a limited portion.

Mr. Abramowitz: Defendants' Exhibit AM in evidence are the court papers of Mayer Fenster, also known as Myer Fenster, and indicate that Mr. Fenster died without a will on March 2, 1940, and that he had personal property that did not exceed \$9,000. There were \$22,000 worth of life insurance left in the estate of Louis Fenster, 30 per cent of it remaining in the estate of Myer Fenster, for a net estate of \$5,513.35. Betty Fenster Glasser received two-ninths under this exhibit for a total of \$1,225.18.

Defendants' Exhibit AM for identification are the court paper concerning the death of Fanny Fenster on October 27, 1944, where the estate is valued at less than \$5,000. Betty Fenster Glasser shared equally with two (1769) brothers and sisters and received one-third of that estate. Assuming that the estate was exactly \$5,000, Betty Fenster Glasser received \$1,666.67.

Defendants' Exhibit AO for identification is the death certificate of Benjamin Sherman indicating that he died on January 13, 1966.

Irvin Hecht-for the Government-Rebuttal-Direct

May I pass these documents to the jury, your Hener?

ie Court: Yes.

(Exhibits AM, AN and AO handed to the jury.)

The Court: What is your wish at this point, Mr. Abramowitz?

Mr. Abramowitz: As soon as the jury is finished examining those exhibits, the defense rests.

IRVIN HECHT, called as a witness, having been duly sworn, testified as follows, in rebuttal:

The Court: Proceed.

Mr. Sabetta: Thank you, your Honor.

(1770)

Direct Examination by Mr. Sabetta:

- Q. Mr. Hecht, you were earlier shown this document at this trial. Do you recall that? A. Yes. That's G in evidence?
- Q. Yes. You have identified this as a photocopy of pages of diaries from 1967 to 1969; is that right? A. That is right.
- Q. Now, in 1967 you were head of the labor department of the association; is that correct? A. I was the manager of the labor department.
- Q. You had an office at the headquarters of the association? A. Yes, sir.
- Q. Where was that at that time? A. 101 West 30th Street.
 - Q. Did you share that office with anyone? A. Yes.
 - Q. With how many others? A. Five others.

Irvin Hecht-for the Government-Rebuttal-Direct

Q. Were they the other members of the labor department? A. That's right.

Q. Do you recall their names now? A. Yes.

Q. Who were they? (1771) A. Mr. Glasser, Mr. Reiss,

Mr. Leibowitz, Mr. Epstein and Mr. Fiegus.

Q. Now, focusing on 1967, and with respect to your diary for that year, some of the pages which you say were photocopied and contained in G in evidence, where was it kept? A. That diary was kept in my desk.

Q. Where in your desk? A. I beg your pardon?

Q. Where in your desk? A. In a drawer in my desk.

Q. Was the desk drawer locked during the day? A. Not during the day. It was locked at night.

Q. During the day did you have occasion to leave your office at any time? A. There were occasions, yes.

Q. Would you go out and take care of labor disputes in the market? A. Occasionally.

Q. During the time when you were out of the office was your desk drawer locked during the day? A. No.

Q. Now, you say at night time it was placed under lock? A. That is right.

Q. Where is the key kept in that desk drawer? A. The key was kept in a little box on an end table next to my desk.

Q. Was that little box itself under lock and key? A. No.

Q. With respect to '68, if I asked you the same series of questions regarding the whereabouts of your diary and the manner in which you kept it, would the answer be the same?

A. It would.

Q. With respect to 1969, if I asked you the same series of questions with respect to where you kept your diary and how it was contained, would your answer be the same? A. It would.

(1773)

Q. So during the day at least the desk drawer containing the diary was completely unlocked? Is that correct? A. That is right.

Irvin Hecht-for the Government-Rebuttal-Cross

Cross-examination by Mr. Abramowitz:

- Q. You testified during the period we're talking about you shared an office with Mr. Glasser, Mr. Reiss, Mr. Leibowitz, Mr. Epstein and Mr. Fiegus? Is that right? Of those people who was the only one that was fired by the Association? A. Mr. Glasser.
- Q. Did every one of these people come in at the same time in the morning? A. No.
- Q. Will you please tell us who came in early? A. Mr. Glasser was always in the office, in fact, I would find him at the switchboard in the morning when I came in.
- Q. What time did you usually come to work? A. Oh, I would say about 8.30, quarter to 9.
- Q. You would always find Mr. Glasser there? (1774) A. Yes, Mr. Glasser opened the office in the morning.
- Q. When did the other people come in? Mr. Reiss? Mr. Epstein, Mr. Leibowitz? Mr. Fiegus? A. Anywhere from 9 o'clock to 9.30.
- Q. Did you all leave at the same time at the end of the day, including Mr. Glasser? A. Mr. Glasser would leave earlier because he came in earlier, and the rest of us would always leave the office later.

Mr. Abramowitz: No further questions.

Mr. Sabetta: No further questions.

(1777)

HENRY E. KATCHER, called as a witness by the Government in rebuttal, being first duly sworn, testified as follows:

Direct Examination by Mr. Sabetta:

Q. Are you working at the present time? A. Yes, sir.

Henry E. Katcher-for the Government-Retuttal-Direct

- Q. In what way? A. I am the executive vice-president of the (1778) Maximillian Fur Company.
 - Q. Where are they located? A. 20 West 57th Street.
- Q. What is the nature of their business? A. We sell furs retail.
- Q. How long have you been in the fur industry? A. The 47th year.
- Q. Are you a mechanic or have you ever been a mechanic? A. No, I am not a mechanic.
- Q. You are in the administrative end of it? A. That is right, sir.
 - Q. Do you know a Mr. George Stofsky? A. Yes, sir.
- Q. Do you see him here in this courtroom? A. I beg your pardon?
- Q. Do you see Mr. Stofsky here in this courtroom? A. Yes, sure.
 - Q. Will you identify him?

Mr. Rooney: Identification is conceded.

- Q. Do you know Mr. Charles Hoff? A. I do, sir.
- Q. Do you see him here in this courtroom? A. Yes, sir. (1779)

Mr. Rooney: Identification is conceded.

- Q. Do you know a man by the name of Sam Baker?
- Q. Was he also known sometimes as Breslin Baker? A. Well, that is his name.
- Q. Breslin is his real name? A. Sam Breslin Baker, I think.
- Q. Who is Mr. Baker? A. Mr. Baker was a furrier in the industry.
 - Q. Is he still alive? A. No, sir.
- Q. Do you know about when he died? A. I don't recall exactly.

Henry E. Katcher-for the Government-Rebuttal-Direct

Q. Now, did you ever assist Mr. Baker to work out a problem he was having with the Furriers Joint Council? A. Yes, sir.

Q. Specifically, directing your attention to some time in late 1970, would you tell us what you did with respect to the incident you are talking about? How did you come to represent Mr. Baker or appear in his behalf in any fashion? A. Mr. Hennessey had asked me to intercede for Mr. Baker, he was having some problems; and I did.

Q. What kind of problems was Mr. Baker having? (1780) A. Contracting problems.

Q. Were these problems with the union? A. That is right sir.

Q. What did you do after Mr. Hennessey contacted you? A. Well, Mr. Baker then called me and asked me whether I couldn't stop by and talk to him about it. I reluctantly finally conceded. At first I didn't want to do it, but then I conceded as a favor to Mr. Hennessey.

Q. And you did talk to Mr. Baker? A. Yes, sir.

Q. Did he tell you what the nature of his problem was? A. Contracting.

Q. Do you know whether a complaint had been filed against him by the union for that offense? A. I presume so.

Q. You don't remember whether he actually showed you the document or not at that time? A. No.

Q. Can you fix the time for us, Mr. Katcher, as best you can? Did you have any recollection of when in late 1970 it was? A. To the best of my recollection I presume it was (1781) the end of '70 or the beginning of '71, somewheres within that time.

Q. What is it that Mr. Baker sought to have you do? A. Well, the usual procedure is a fine.

Mr. Abramowitz: Objection.

The Court: Just a moment. Objection sustained.

Henry E. Katcher-for the Government-Rebuttal-Direct

Q. What did you do thereafter to resolve this dispute? Let me rephrase it. Did you meet thereafter with Mr. Stofsky and/or Mr. Hoff in connection with this matter? A. We did.

Q. Where and when for the first time did you have such a meeting regarding this problem? A. The first time after I spoke to Mr. Baker I called, I think, Mr. Hoff and I wanted to hear his side of the story, and it was conceded by Mr. Baker—

(1782) * * *

Q. Mr. Katcher, try to confine your answers just to the specific questions I am going to ask you. Did you meet with Mr. Hoff during this period to discuss the problem of contracting that Mr. Baker had told you about? A. Yes.

Q. Did you meet with Mr. Hoff and Mr. Stofsky to discuss this problem? A. I don't recall whether both were there?

Q. How many meetings did you have with any union officials, either Mr. Stofsky or Mr. Hoff, concerning this problem? A. Probably two or three.

Q. At each of those meetings can you tell us who was present? A. Mr. Hoff, Mr. Stofsky, and at one point I think there was Mr. Hecht from the Association, because Mr. Baker was a member of the Association.

Q. Now, during these meetings with Mr. Hoff and Mr. Stofsky, did you discuss the contracting problem Mr. Baker had told you about? A. I tried to mediate the problem.

Q. As a result in part of your efforts, was there a settlement reached of some kind of a disposition arrived at on this problem? A. Yes, sir.

Q. What was the disposition? A. The disposition was that Mr. Baker was fined \$500.

Henry E. Katcher-for the Government-Rebuttal-Cross

Q. Do you remember whether Mr. Stofsky or Mr. Hoff (1784) or both of them that gave the union's assent to this particular disposition? Who spoke for the union, as best you recall, and saying, "All right, we agree that this shall be the way to dispose of this matter?" A. I don't remember who agreed to it. Evidently it must be agreed to by both.

Mr. Rooney: I object.

The Court: I will sustain the objection at this time.

Q. Do you know if both were present, that is, Mr. Stofsky and Mr. Hoff, at the meeting where the agreement was reached? A. I don't remember.

Q. Your best recollection is you can't recall? Are you sure that one or the other was at that meeting? A. They had to be.

Mr. Sabetta: We have no further questions.

Cross-examination by Mr. Rooney:

Q. Mr. Katcher, you had other meetings with Mr. Stofsky and Mr. Hoff during this period, did you not? A. That is right, sir.

(1785) • •

Mr. Sabetta: Your Honor, that completes the Government's rebuttal case.

Mr. Abramowitz: No surrebuttal.

(1795) Defendants' Summation by Mr. Abramowitz:

(1811) * * *

Now, with all this background in steps a man like Jack Jack Glasser has been in the industry for 34 years. He worked for the Association of Fur Manufacturers for 34 years. He knows, as well as anyone, what the union's strengths and weaknesses are with respect to catching contracting. He knows it. He knows it better than any employers know it, because it's his job to be the representative of the association when there is any contracting catch. He knows how many people get caught. He knows how many cases are brought before the impartial chairman. That's his job. His job is to represent the interests of employers whenever there is a union problem with respect to contracting or anything else. Now, for a man that's been there for 34 years he knows the ins and outs of what the union can do and (1812) what the union can't do. Now, he probably had more information about contracting that was done by employers than the union had. He was their representative, the employers' representative. They would confide in him and tell him what they wanted to do; that they wanted a contract and he could tell them, don't worry about it. Don't worry about it, I'll take care of it. They would talk to him before they would talk to anybody with the union. Now, Mr. Glasser came here and told us of certain conversations that he said he had with certain manufacturers who were in his district during the period 1967 to 1972. He said he had a district that included 100 shops during that period, and I think it was down to 80 in 1970, and he testified about five manufacturers that were in his district. Five out of 100. He had some testimony about Mr. Ginsberg, who was not in his district, which I will get to later. Now, of the five manufacturers in his district, we don't know, except for Mr. Glasser, what these conversations were. Only Mr. Glasser knows. He told us that he had a conversation with Ben Sherman and he was sure it was in

'67, and now we know it couldn't have been in '67 because he died. We know that he testified in the grand jury-he said the conversation was with Sam Sherman and not with Ben Sherman and here at trial he says it was with Ben Sherman. He says he had a (1813) conversation with Mr. Hessel. He says he had a conversation with Mr. Cohen. He said he had a conversation with Mr. Baker. Mr. Baker is dead. He said he had a conversation with Mr. Schwartzbaum. None of them were here. None of them were here to tell you what that conversation was. And it's the government, not the defendants, that have the burden of proving the defendants guilty beyond a reasonable doubt. So, we have Mr. Glasser. What does he say these people said to him? Now, the judge is going to instruct you that it's not my recollection of the facts and it's not Mr. Sabetta's recollection of the facts, and indeed it's not the Judge's recollection of the facts, but it's your recollection of the facts that controls. So if you disagree with what I think the evidence says, you are free to absolutely disregard it, but I recall the testimony being in each one of those, five of them, there is not one word about money going to the union. There is not one word that Ben Sherman or Sam Sherman said I want you to pay off this union official or that union official or any union official to take care of this for me. In fact, my recollection is that Mr. Glasser said Ben Sherman said could I get him permission to give out some of his work to non-union shops. Glasser says, "I don't know, but I will let you know." He doesn't say, "I am going to go down to the union and check and let you know." He is (1814) the labor representative for the association. It's his job to represent the employers and there is provision sometimes for the contracting out of work when the union gives permission, but there is no word that the money I am going to give you, or the money that Glasser says he got from these people-there is not one

word that you should pay off a union official to watch out for this Hessel. "Hessel called me and asked me if I could arrange that he should not be harassed when he gives out his finishing, harassed by the union." Not one word that the money that he says he got from Hessel was going to go to the union or even implied in the conversation.

Now, Mr. Sabetta is going to argue it's an inference you can draw from the facts. Ladies and gentlemen, an inference is not a substitute for proof. There is no evidence There is no evidence that Mr. that Mr. Hessel is dead. Schwartzbaum is dead. There is no evidence that Mr. Sherman is dead, or any of them, except Mr. Baker. Now, with Baker he said, "He called me on the telephone to come up and see him. He told me he would like to run a small shop only during the busy season. He did not want to have any employees on his payroll during the first six months of the year when he was not busy since he was not mainly a retailer, but that he would like to employ a (1815) designer to make up his line, samples, and to give out to his contractors." Not one word about money to be paid to unions. Schwartzbaum says, "I want to have imports. See what you can do."

Glasser works for the association. These people are entitled to speak to Glasser to try to get the union to agree to do something. The union is not out every day in the week to destroy manufacturers. They are not out in every day in the week to try to strike these people. They have to keep their workers employed. It's perfectly reasonable, and a perfectly reasonable inference that these people, all of them who were not here to testify, told Mr. Glasser to try to work it out with the union. I don't want to have these problems. I don't want to have a strike. But there is absolutely no evidence, except from the mouth of Mr. Glasser, that any money passed between these people and passed on to the union. Only Mr. Glasser. The man who says that

the \$130,000 that he has in the bank today came from an inheritance from his wife's parents. An inheritance which I showed you by mathematical calculations came our to \$1,000 from her father and \$1,000 from her mother in 1940 to 1944. \$1,000 each. And he has got \$130,000 in the bank today and he does not have one record to come in here to show you where that \$130,000 came from. Not one record. (1816) His bankbooks are thrown out. His tax returns are Before cross-examination of Mr. Glasser he thrown out. told the government a story. He told the grand jury a story. He essentially repeated the story to you. This is on The story he told you is absolutely direct examination. inherently unbelievable without any of this evidence that he lied about other matters. The story itself is absolutely unbelievable. He says that he had a conversation with Sherman and then after his conversation with Sherman the first person he speaks to is Hoff. Charles Hoff, the assistant manager of the union. He didn't speak to Wolliner, who was the business agent. He told me he didn't pay Wolliner, but Charles Hoff. He goes to Hoff. does he go to Charles Hoff? Charles Hoff's role, if anyif he was a corrupt union official-would be after Sherman got caught, not before. He could not stop the business agent, Wolliner, in the shop from finding contracting. He couldn't stop anybody-any workers in the shop of Sherman from complaining about contracting. Hoff's role, if any, would come in when it goes before the impartial chairman or when there is a decision to be made as to whether to prosecute the complaint, but he says that he went to Hoff, not anyone else. The conversation with Hessel. Hessel, you will recall, is the cloth shop, not even a fur shop. It had non-union workers on the premises. It had (1817) furriers on the premises, members of the union. Every furrier that was on that premises and every member of the union that was on that premises was a plus for the union. The firm was no longer a fur firm and how in blazes can

Mr. Glasser get up here and say to you that Mr. Hessel told him he wants to keep it a secret from the union that he has non-union people on the premises. There were workers there who can walk down to the business agent and tell him there are non-union workers on the premises. that's the conversation. Hessel wanted to keep it a secret that he was having non-union people. In this case he says he paid Al Gold. He paid Al Gold. He doesn't remember where. A couple of days later he took the money out of his pocket, the same money he had from Hessel with a rubberband around it and he gave it to Al Gold-it went Gold, Hessel, Schwartzbaum. He had no records and they took These little street meetings where the money goes like this, but the business agent, he says here he did give money to the business agent-that's Mr. Lageoles-to keep it a secret that there are non-union workers on Hessel's premises. Why does Glasser say-after all his time on the stand-that he gave money to Lageoles? he didnt give it to the other business agents. Mr. Lageoles is the only business agent he says he gave money to with the (1818) exception of Jaffe. I will tell you why. You remember the testimony in August of 1970, Mr. Glasser was sick and there was a contracting catch at Sherman Bros.? Sherman Bros.—the company that was paying for protection in 1967 to 1972 had a contracting catch in August of 1970 and had, in fact, a contracting catch in January, 1968, which Mr. Glasser had to say he deducted from the fine-he deducted from the payment that he got. It is absolutely nonsense. If the man is paying protection, why did he continue to pay protection after he got caught? But in August of 1970 he gets caught, and he gets caught by Lageoles, the man who is supposedly on the take, as soon as he became business agent of Sherman Bros. And you remember the estimony, he said he got a phone call from Mr. Sherman in the hospital or right before he was supposed to go for an operation and he said Sherman was furious. He called him

a drunken bastard. He said "You fired a floor worker." In the grand jury he said there was a strike, but here he said "You fired a floor worker and the floor worker complained to the union that there was contracting." That's an absolute outright lie. Lageoles caught the contracting and filed that complaint in August 6, 1970. That is the beginning of the end of Glasser with the association and that, ladies and gentlemen, is the reason why Mr. Lageoles is sitting in this courtroom.

(1819)

That is why, because Sherman runs to the Association and tells Mr. Hecht and Mr. Greenberg that "I have been paying Jack Glasser off for years just to stop this, and now I get caught for contracting."

And then Mr. Hecht, who testified here, says he conducts an investigation and he finds out that other manufacturers have been paying Glasser, and he said that he found out that none of the money went to the union officials. said that on the stand. And Glasser gets bounced, bounced after 34 years, bounced without his pension, the Association pension-not the union pension, not the industry pension-the Association pension, which none of the defendants sitting in this courtroom has any control over whatsoever, they are not trustees, and they have no influence over the pension of the Association of Fur Manufacturers, absolutely no influence.

And you remember I asked him is he bitter, if he bears a grudge, does he bear a grudge against anyone? He says he does not bear a grudge but he is still bitter.

I mentioned the name Greenberg to him, and he flipped. He says Greenberg till he dies is out to destroy him, not the union, and that Greenberg, who was then the president of the Association, fired him, and they fired him not because of paying off union officials, but (1820) for taking

money from employers, for conning employers, for thinking they could get away with something in which he knew the odds on getting caught were absolutely impossible.

Now, I don't know whether he was conning these people, and I don't know whether he was threatening these people. He could have just as well gone to Schwartzbaum and said, "I know you are importing, Mr. Schwartzbaum, and I'm going to tell the union you are importing unless you give me \$900 a year."

He could very well have gone to Sherman and said, "I am going to tell them about contracting; I am going to tell them where you do it; I know where you do it; I am your representative." He could have gone to any one of those people and threatened them. And you heard evidence in this courtroom that he is not above threatening anyone in sight to get what he wants.

You heard evidence from Mr. Hecht that he threatened them that he would go down to the union and sign a false statement that Mr. Greenberg tried to bribe him to implicate union officials. That absolutely implies that he was not paying off union officials. And Greenberg and Hecht knew he was not paying them off, (1821) and yet he threatened them with going to the union with that.

You heard testimony that he went to Mr. Hoff and threatened that he was going to expose the fact that he had been giving him diary papers. He is not above threatening anyone to get his own way. And he was angry, and you saw him angry. You saw what he said. He said that the Association is an absolutely impotent Association, that it has as much power as Bella Abzug has in Congress.

A man who worked for the Association 34 years has that to say about the Association. Now, there is one portion of Mr. Glasser's testimony that the Government

did seek to offer the testimony of a manufacturer on, and that man is Mr. Ginsberg.

Ginsberg testified here. He is a man of great dignity. He tried, he testified, in good faith from 1967 to 1969 to increase the size of his shop. He kept employing more union workers, more and more union workers each time, and you heard testimony from Mr. Stofsky and Mr. Hoff that that is the goal of the union. They don't want to file contracting complaints; they don't want to spend their time before the impartial chairman; they want workers to keep their jobs. That is the function of the union. (1822)

The function of the union is not to police the streets for contracting; it is to keep jobs. So Mr. Ginsberg had a good record. He rented extra space, took on more workers. And then you heard testimony that one of the central figures in this grand mass of conspiracy charged by the Government, Mr. Hoff, was out in California on a trip and found or saw labels bearing the name Animal Crackers, which he learned later related to Mr. Ginsberg.

This man, the center of this massive conspiracy with Glasser, catches Mr. Ginsberg after Mr. Ginsberg supposedly paid Mr. Glasser money to prevent him from getting caught. So he gets caught.

The payment, according to Glasser, took place in May or April, and Mr. Hoff is in California in October. He catches the importing and conducts an investigation. What are the results of the investigation?

The Government produced an exhibit that was prepared by Mr. Shifrin that showed that the firm admitted one instance of contracting with about 14 rabbits for a total of \$179, and about \$22,000 worth of what on their face appeared to be jobbing.

You heard testimony yesterday about the difference between jobbing and contracting, and particularly you heard testimony yesterday about the difference in penalties (1823) with respect to jobbing.

Contracting if you can prove it was on a systematic basis, even on one catch, if you can prove that there was a whole series of transactions, can on the first offense result in a suspension and can result in a huge fine based upon the cost of the labor involved.

Jobbing, which is the importing from non-union sources, and which is what appeared on Government's Exhibit 15 and which is what Mr. Reiss, the Government's own witness says appeared on the face of Government's Exhibit 15, jobbing, no matter for what amount, the first offense is \$300. If they chose to prosecute the complaint against Mr. Ginsberg and it showed jobbing, all Mr. Ginsberg could have been fined is \$300.

Regardless of the amount of jobbing, he could not have been suspended for that. And the defendants here chose not to prosecute. The Government is making a grand conspiracy of this because they chose not to go on the contracting of 14 rabbits for \$179, or not to enforce the jobbing provision, which would have resulted in a fine of \$300, that they chose to leave Mr. Ginsberg alone. They do this every day in the week. They are not in the business of destroying manufacturers. If they destroy manufacturers, they can lose workers, and that is (1824) not what they want.

Now, you heard testimony that Mr. Ginsberg himself was planning to change; he was going to get out of the rabbit business and going into something else.

The concern of the union was to keep as many jobs in Mr. Ginsberg's shop as possible. That is why they did not prosecute the case.

Mr. Ginsberg testified he had no idea what Mr. Glasser did with the money; he has no idea that it went to union officials. This is one of the counts in the indictment, that Ginsberg gave money to these people. And the government

calls a witness who says he has no idea where that money went. It is the intent of the witness that is important to prove these people guilty beyond a reasonable doubt, and the only manufacturer they called in the Glasser series is Mr. Ginsberg, who says he has no idea what Mr. Jack Glasser did with the money. Yet he was caught by one of the so-called members of the conspiracy, Mr. Hoff.

If he paid Glasser, why did Mr. Hoff catch him? Glasser is too smart for that. He said he didn't pay off Hoff; he paid off Mr. Gold. What could Mr. Gold do? Both can't be responsible. That is why he picks out Gold on this one, because there is no other way to (1825) explain why Mr. Hoff caught him.

Sometimes people who are lying make mistakes. Mr. Glasser made a mistake. He said in reference to Ginsberg after he got caught, "I couldn't protect him because I had nothing to do with his shop. I mean, if he got caught, that would be his tough luck." He said that, "I could not protect him; I had nothing to do with his shop; if he got caught, that would be his tough luck."

Ladies and gentlemen, Mr. Glasser told Ginsberg that he was going to protect him. He conned him or he threatened him, I don't know which, but he told him he was going to protect him, and then says there is nothing he can do, there is nothing he can do if he gets caught contracting. Then what is this money supposed to be for, except to line the pockets of Jack Glasser. Absolutely no evidence that any money went from Glasser to anyone of these four people in this one grand conspiracy running over four years.

Now, even if the story makes sense to you—I can't possibly see how that could be—how else could people show that a witness is lying? How do you show it? You show it on cross-examination. You see what happens to him

when he is asked questions. How does he respond? Does he answer truthfully? (1826) Does he try to listen to the questions? Does he try to respond? Or does he lie?

Ladies and gentlemen, he lied about the \$130,000; he lied, and he had his wife come here to lie to you about the \$130,000. He lied about paying Anolik by check. He said that Hoff paid and that he throws out his checks. He throws out his bankbooks. He throws out his tax returns. We have to come in—and we are not required to do this in this case or in any case—we have to come in with union checks and Mr. Hoff's personal checks to show that there is no check to Mr. Anolik.

Mr. Anolik said he deposited his check, and there is a deposit slip in evidence. But this man comes in here and says that Hoff paid for it. And we have to go through our records to find them, but he throws his out because they are too heavy.

He also testified under oath that he told Anolik that he was involved in the scheme to buy off union officials. Anolik said that never happened. He lied about threatening the Association. He lied about threatening Mr. Hoff. He lied about the documents that we showed you. He lied about being fired. He didn't even remember that he swore under oath in the grand jury that he had been fired, and then he says here that there was a (1827) phase-out, and five or six people got together and "I was the one that decided to quit." In each and every one of these instances—there are others he lied.

I don't want to waste your time with the fact that he said he wrote his notes after the grand jury, that he wrote them the night before the grand jury, and that he wrote them all at the same time, and that his pen ran dry, and each of these was a different paper. Each and every one of these lies is enough to want you to hesitate to rely on

his word, and that is all that the defendants have to show, enough to make you hesitate, to say that the proof is not proof beyond a reasonable doubt.

(1846) Government's Summation by Mr. Sabetta:

(1858) * * *

Mr. Abramowitz in really an unspoken assumption would have you find that for about 35 years Jack Glasser has been conning this market, which is about nine square blocks, out of roughly a hundred thousand dollars, to use an even figure, that the manufacturers just aren't too bright, that they have been giving away money to Glasser under false pretenses and which Glasser has simply been pocketing. That is the unspoken assumption Mr. Abramowitz would have you find, the one that should prevail in this case.

The fact that Mr. Glasser received moneys is openly admitted. That wasn't only testified to by Mr. Glasser, it was not only testified to by Mr. Hecht, who said he made an investigation where manufacturers admitted (1859) giving such money to Mr. Glasser, but it is also testified to by Mr. Ginsberg, who said he handed the money to Mr. Glasser.

Now, Mr. Abramowitz has said, "Well, they have one person outside his district, Mr. Ginsberg."

He says, "Where is Mr. Sherman? Mr. Hessel and the others? Why didn't the Government call them? The testimony is they made payments to Mr. Glasser."

The answer to that is two-fold. Firstly, the defendants have admitted on the stand that they knew Glasser had been receiving money from the manufacturers. They knew he had been fired for that. We will get later to this very studious answer on their part of ever asking Jack Glasser, "Say, Jack, what was this all about? Why were you taking moneys?" They never sought to ask him that.

Mr. Stofsky would have you believe he generated tremendous energy in keeping 69-year old Mr. Jaffee from a job. But when it came to asking Jack Glasser what this was all about, never a question. Mr. Hoff, never a question. They simply didn't know, had no idea what it was all about. But beyond that, beyond the defendants' admissions and the other evidence establishing principally Glasser got these moneys, you may consider this fact, that (1860) the manufacturers had they simply paid Glasser with no other understanding that he keep the money, based on what his Honor will charge you is the law under the Taft-Hartley Act, you may find that they would not have been committing a crime, these manufacturers, and if that is the case, they should be ready, willing and able to come in here and say, "All right, we paid Jack Glasser, a member of the trade association, but we never knew the moneys were going to the union officials, we had no idea, we are not guilty of Taft-Hartley violations."

Why have they not been called to testify to that? Why didn't they simply walk up and say, "Oh, yes, we paid Jack Glasser; it had nothing to do with the union." Both sides have the subpoena power. It was a crime, though, and if any of these manufacturers did foresee or intend these moneys would go to union officials, you may consider whether and how probable it is that they could be called by the Government to testify.

(1861)

And I hope to spend a few minutes now in doing that, in sketching out what the evidence we submit shows in this case. Incidentally, when you come to consider what the manufacturers had in mind in paying Jack Glasser, you might want to recall that there was no mystery about Jack Glasser's job and the functions he exercised. Certainly each

of the manufacturers knew that he had daily contact with Each of them knew that he had been in union officials. the market for some time, 34, 30 years or so. You remember even in the case of Mr. Ginsberg's foreman. Apparently Mr. Ginsberg's foreman had heard or knew of information which indicates that Mr. Glasser was the person to see in certain instances for setting up an arrangement with the union for the kind of leeway to violate the contract you have heard about in the testimony here on trial. He was perfectly positioned for those smaller manufacturers who didn't have the clout, perhaps, to deal directly as Mr. Grossman did with Mr. Stofsky right at the top level. He was perfectly situated to act as a bagman for those manufacturers who sought the privilege to violate the contract. Is it really believable that these people—these manufacturers paid Glasser the money thinking that he would keep it to himself; sit down at night and count it in his bedroom without doing anything else with it? They all sought assurances of freedom from (1862) union harassment for the various violations of the contract they had in mind or were already participating in. How could Glasser-this wanted member of the trade association as a labor adjuster, guarantee them anything without first getting some sort of agreement or meeting of the minds with the appropriately placed union It was simply wholly illogical, and I think in your common sense you are likely to find that businessmen running substantial operations, a quarter of a million dollars and up, are not likely to be easily duped out of money in return for which they get nothing but an empty promise over the course of, Mr. Abramowitz would have you believe, about 35 years in the marketplace. Just try that one on for size in your own common experience and see where you come out on that one. Now, Mr. Glasser testified that he had a discussion with Mr. Ben Sherman of Sherman Bros., I believe he said in '67, and Mr. Abramowitz puts in

a document which shows that Ben Shernan died in '66. Perhaps you caught it, but it escaped me what the significance of that document was where each of the defendants has already acknowledged-or several of the defendants has already acknowledged as has Mr. Hecht, as Mr. Glasser himself, Mr. Ginsberg, that Glasser was taking the moneys So, Glasser was wrong on the year. from those firms. That's terrible. Does that in any way (1863) rebut the admissions of the defendants themselves that they knew Glasser was taking moneys? What's the significance of that piece of evidence? So Glasser had these discussions with Ben initially and then Sam Sherman, and they asked him to see whether he could work out an arrangement wherein they can give out contracting without fear of union harassment or reprisal. And he says, "I don't know. I will have to check." He puts it in 1967, his first conversation. Perhaps it was a year earlier, perhaps it was two years earlier. He checks; he speaks to the appropriate people; he speaks to Mr. Hoff: he speaks to Mr. Gold. He tells them that Mr. Sherman is willing to pay \$1,000 for this privilege. They agree. In 1967 \$1,000 is paid. One-third is kept by Mr. In 1968 \$1,000 is paid. One-third is kept by Mr. Glasser. Glasser. In 1969, \$1,000 is paid and now in these, the first charged count in the indictment, one-fourth is kept by Mr. Glasser and the rest is distributed evenly to Mr. Hoff, to Mr. Gold and ultimately to Mr. Lageoles, who became suspicious one day on a visit to the shop who hadn't been cut in on the deal originally, confronted Glasser. said "Forget it. Wait downstairs." He got an additional hundred dollars from one of the Sherman Bros., Sam Sherman, I believe. He thereafter went down and paid Mr. Lageoles to look the other way, not to be too inquisitive. (1864)

Now, Mr. Abramowitz has argued that this really doesn't make sense at all, that if you are going to construct a

scheme like this and if Mr. Glasser's testimony is to have any rationale logical basis, that Mr. Glasser should tell you. well, in every case for every firm I paid off the business agent, I paid off Mr. Hoff, I paid off Mr. Gold, I paid off Mr. Stofsky. Make it a nice symmetrical package for each of the firms. Maybe that would be very easy for you to understand, and you could say, well, the format for each firm was the same. This is how it was. Jack Glasser laid it out for us. And you may consider that if Jack Glasser is fabricating this story, whether he wouldn't think to himself, or if some government agent unnamed, unidentified is feeding him the story, whether they wouldn't have said. "Look, Jack, I think this will make the most sense to the jury. Let's do it this way. You will say each of these men were on the take in each of these situations. has sort of an inner rationale to it. It's logical. It will be easy for you to recall and remember. It will be a very nice package." But you have heard Mr. Glasser testify that some of the business agents were never approached by him. So far as he knows they were not on the take. There is no evidence Mr. Wolliner was on the take, who is now retired living in Florida. There was no evidence Mr. Ziebel (1865) was on the take. There is no evidence of a number of people. Mr. Schifrin, there was no evidence that he was on the take. Now, it takes two in these circumstances to commit this kind of consentual crime. In a crime of violence, for instance, you can have the victim assaulted by some other person and there is only one criminal individual involved in that crime. We are talking here about a different kind We are talking here about consentual crimes where people agree to violate the law, Mr. Glasser on one hand and the manufacturers on one hand and the union officials on the other. You don't just walk up lightly to people whom you believe may be honest business agents of the union and say, "Here, how about a couple of hundred bucks? Why don't you take this and look the other way."

Nor would you do so if you had an economic self interest. You may find axiomatic that people involved in criminal activities do not look for ways to give away money, to divide the pies up into greater shares. I mean, that's not the way you would normally proceed. You are not usually in that state of mind. You are not a philanthropist at that point. You don't seek to give away money unless you have to. You have heard testimony about how Mr. Hoff was situated and how Mr. Gold was situated and the discretionary powers that they exercised. You have heard that in a number of (1866) cases the business agent was not paid off and you have also heard in many of those cases—in most of those cases it was not necessary to do so.

(1883) * * *

You will find Mr. Glasser from his appearance on the stand is not a wholly unintelligent man. He has (1884) had time to think about this. You may find that what he has testified to in this respect is the truth, and that is why you heard it in the fashion that you did.

I want to explore for one moment right here the motive of Mr. Glasser. You remember Mr. Abramowitz said in his opening that he was going to lay out for you and it would become clear to you during the course of the trial the extensive motives of the various witnesses to lie and to fabricate these stories. Wherein do you find Mr. Glasser's motive to frame these defendants? Has it been articulated for you by Mr. Abramowitz? Have you perceived it in any of the evidence that has been offered at trial? I credit Mr. Abramowitz with bringing out the fact that on cross-examination at page 376 of the record he elicited the fact that Mr. Glasser got immunity.

We know he got total immunity, not the so-called use immunity that some of these other people got. He got

immunity before he implicated any of these defendants. Before.

Now, ask yourselves why in light of that fact is it that Mr. Glasser would come here now fully shielded and protected from any kind of prosecution whatever regarding those crimes he acknowledged, why does he come here and place himself in the only position he could possibly (1885) place himself in, in jeopardy by perjuring him-That is the only thing after having received full immunity that he need worry about. What is the motive at that point for Glasser to take the stand and perjure himself? Does it make any sense to you? The chronology of the way this happened is of some significance. Glasser received the quid pro quo at the beginning. He got immunity at the beginning, and it is uncontradicted that he didn't tie these defendants in in any fashion, I believe, until after he had been immunized. There was absolutely no motive for him to do that at that point.

You can contrast that with the situation where, let's say, a co-defendant, someone named in the indictment who has pleaded guilty before trial and is going to testify against another defendant who is going to trial, that co-defendant who has pleaded guilty has not yet been sentenced, he still has a motive to lie, he still has an interest in furthering the Government's case because he knows down the line he is going to face a sentencing judge, he has not yet gotten his quid pro quo. That is a vast distinction from Mr. Glasser, who received total immunity at the outset.

Mr. Glasser has also said following that grant that he kept some of those moneys himself. There is absolutely no mystery about that. He does not advance (1886) his own self-interest in the eyes of the world or in the eyes of criminal law by saying, "I gave some of it to the de-

fendants and kept some for myself." If you keep a dollar or three dollars, it doesn't matter, you have committed a criminal offense with regard to the Federal Income Tax Code and you are facing the same penalties. What difference does it make at that point. I listened very keenly for a motive of Mr. Glasser to do what Mr. Abramowitz said he did.

(1891) * * *

I don't want to pass without mentioning the documents which the defendants put in about the inheritance with They substantially respect to Mr. and Mrs. Glasser. undermine what Mr. Glasser said at trial to this extent, to the extent that they reflect what passed at the time of death in that (1892) fashion. They say nothing about what may have passed as a result of gifts prior thereto, what trusts may have been in existence. Nothing about They say nothing about what the moneys were received in violation of the estate tax laws under the table by Mr. and Mrs. Glasser, or directly Mrs. Glasser. They say nothing about that. They give you an incomplete picture of documents prepared by a lawyer. can look on the face of them. They are exhibits prepared by a lawyer, affidavits prepared by a lawyer if you ever signed one prepared by a lawyer, you will know what they look like. They give you at the very best a marginal look of what took place at that time. Against that you have to contrast the inference that Mr. Abramowitz and the defendants would have you draw from that, which is that beginning with Glasser's involvement in the market in about 19 whatever it was, 1933, '36, until the time he left in '70 he was raking in these moneys from these just not too bright manufacturers who were being duped or extorted by Mr. Glasser for all those years. That's the alternative that Mr. Abramowitz would offer you.

Colloquy

(1904) * *

(In the robing room)

Mr. Abramowitz: Your Honor, I wanted to apologize for interrupting Mr. Sabetta's summation, but as you know, some appellate judges say you have to do that and I am glad that you directed me not to because I generally don't like to do that. several objections to some portions of Mr. Sabetta's summation. The most glaring one, and the one that comes to my attention first, is his reference to both sides having the subpoena power in his conversations with respect to I think Schwartzbaum, Hessel and others. I think he said that both sides have subpoena power and I think that that implies that we had the power to call them, and as your Honor knows from our discussion yesterday, we could not have because they were going to take the Fifth Amendment.

The Court: I will give an instruction on that. Anything else?

Mr. Abramowitz: There were several references about the defendants not producing records and the defendants not producing evidence. I have recollection here that it was about Chateau and there was no evidence from the defendants with respect to two sets of books for Baker. There was no evidence to what I personally didn't ask Mr. Poulos or other witnesses. There are two references to the lack of documents produced by the defendants. That's it for—(1905) I think it implies to the jury that the defense has the burden of proof, has some requirement to produce evidence when, as your Honor knows, the government has the burden of proof.

The Court: I will not give any instructions about that. In my general instruction in the charge I will, of course, indicate that the burden is on the government. Now, as I—my understanding is that that's a fair comment for a prosecutor to make.

Colloguy

Mr. Abramowitz: I don't think that it's a fair comment to say that we have failed to produce evidence. I think that under the cases even if the defendants have testified, that implies that we had failed in our burden of proof and I don't think it's a fair comment.

Mr. Sabetta: I don't think I said that, your Honor.

(1906)

Mr. Sabetta: I don't think I said that. I don't know what verb I used or noun I used, but I said it might be considered by the jury. There was a lot of testimony in the trial about documents which were reviewed, that Mr. Hoff reviewed documents, new documents are generated all the time. Mr. Stofsky referred to notes that had been derived from union files.

The Court: I think Mr. Sabetta said at one time that the defendants did not have to produce any evidence. In any event, I will address myself on this point in the usual fashion during the charge.

(1908) * * *

Mr. Abramowitz: These objections I would have made had your Honor permitted me to stand up in the middle of summation.

The Court: Yes. Is that all?

Mr. Abramowitz: I move for a mistrial on all the objections, and, particularly, the one with reference to both sides having the subpoena power to call these witnesses.

The Court: Denied.

(In open court.)

Colloguy

The Court: Just one brief instruction. The (1909) attorney for the Government has stated with respect to the availability of some of the manufacturers who did not testify here that the defendants could have subpoenaed them. I instruct you that for all practical purposes the manufacturers who are said to have been involved in the alleged crimes here are not available to be called by the defendants. Indeed, they are for all practical purposes unavailable to the Government as well, since the Government has apparently chosen not to apply for immunity for them.

With that instruction I ask you not to discuss this case with anyone nor amongst yourselves, don't make up your minds yet, you have not yet heard the Court's instructions as to the law. So you must keep an open mind. I will ask you to return at 10 a.m. tomorrow morning. Mr. Foreman, lead the jury out.

(Jury excused.)

Mr. Abramowitz: Your Honor, one last matter: I take exception to your Honor's instruction to the jury, because they are available to the Government and they could have been given immunity. I believe the instruction you gave is unfair.

The Court: I think it is the fairest way I could correct what I think should not have been observed (1910) by the prosecutor, especially in view of our earlier discussion. It is the fairest way I could find to instruct them and thereby meet your objections to the comment without at the same time introducing in some explicit fashion the fact of the existence of the indictment which involves some of

Charge of the Court

the manufacturers who have been mentioned here. So you have your exception.

Mr. Abramowitz: I move for a mistrial on that ground.

The Court: Denied.

CHARGE OF THE COURT

(1915) * * *

Counsel, Mr. Foreman, ladies and gentlemen of the jury: First, let me express our appreciation for your attentiveness and your punctuality and your patience during the course of this trial. Although this has not been as extended a trial as some tend to be in this court, and although you have not been sequestered as some jurors presently are in this court, we know that many of you in order to serve on this jury have had to make important personal sacrifices. Of course, our system of justice is premised on the proposition that people such as you will step forward and make the sacrifices necessary to serve. You have done so, and we are all grateful to each of you personally for your contribution to the fair and impartial administration of justice.

I also want to thank each of the attorneys for their cooperation during this trial. We have all been privileged to see on behalf of both sides here considerable professional skill and serious dedication.

You have been sitting here during the course of this trial, as I noted, with great attentiveness to the evidence as it has been presented in this case. I have (1916) repeatedly instructed you to reserve judgment until all of the evidence is in. It is all in. Soon the spotlight will turn to you, and your most important role in this case will begin. But, first, I will now instruct you as to the law with respect to the charges at issue here.

Charge of the Court

I make no pretense that you will find what I have to say here simple. It is not. But I am confident that if you give me the same attention you have given thus far in the case and if you prepare yourselves to focus on the principles of law, you will discover during your deliberations that as a deliberative body charged with making serious determinations with respect to the serious charges brought against the defendants, you will be able to sort out and apply these principles. It is your solemn duty to do so. The defendants, the government and the court are depending upon you to do so. Please keep in mind throughout these instructions that at any time after you have commenced your deliberations you may request that any portion of this charge be read back to you.

Now, I will first discuss some general principles which are essential to the performance of your function in this case. Then I will outline in considerable detail the specific charges against the defendants on trial here. Then I will explain briefly some guidelines and definitions (1917) which you will be required to apply here. And then, finally, I will turn the case over to you.

First, the general principles:

You are the sole and exclusive judges of the facts in this case. You pass upon the weight of the evidence. You determine the credibility of the witnesses. You resolve such conflicts as there may be in the evidence. You draw such reasonable inferences as may be warranted by the testimony and the exhibits in the case.

It is my function to instruct you as to the law applicable in this case. It is your duty to accept the law as I state it to you—and it is your duty to apply the law to the facts as you find those facts to be during your deliberations. I ask you not to single out any one instruction as stating

Charge of the Court

the law, but consider the instructions as a whole. The logical result of your application of the law to the facts should be a verdict of either guilty or not guilty as to each defendant, as to each count of the indictment in which he is named.

With respect to any matters of fact, it is your recollection and yours alone which governs. Anything that counsel for the government or for the defendants may have said with respect to any factual matters is not to be substituted for your own independent recollection of the (1918) evidence in this case. Likewise, anything which I have said during the trial, or will say during these instructions with respect to factual matters in evidence is not to be taken in lieu of your own recollections. It is your recollection of the evidence and yours alone which controls.

As you approach he performance of your function in this case, that is, see determination of whether each of the defendants, or any of the defendants, is guilty or not guilty, you must constantly bear in mind that it is your duty to weigh the evidence calmly and dispassionately, without sympathy or prejudice for or against any defendant. Any person appearing before this court is entitled to have a fair and impartial trial, regardless of any accidental characteristics, such as citizenship, occupation, or station in life.

The fact that the government is a party here, or that the prosecution occurs in the name of the United States of America, entitles it to no greater consideration than that accorded to any other party in this case; and, by the same token, it is entitled to no less consideration. All parties, government and individuals alike, stand equal before the law.

I, too, of course, am bound by that important principle, and you are to assume that I have no opinion as (1919) to

whether or not any of these defendants is guilty or not guilty, or as to the truth or the falsity of any of the charges asserted in this indictment.

These conferences that I have had with the attorneys at the side bar here, or in the robing room, or while you may have been in the jury room, are on procedural matters and on a motion and objections that counsel have with respect to legal issues. Counsel have a right and a duty to make such motions and to press legal objections, and the fact that I have asked the questions, denied their motions or granted them, and sustained or overruled their objections, is not to be taken by you as an indication that any defendant is believed by the court to be guilty or not guilty.

Now, in this case each defendant has pleaded not guilty to the counts of the indictment with which he is charged. This means that each defendant has placed in issue every element of each of the crimes charged against him. Consequently, the government has the burden of proving with respect to each defendant, each and every element of the crime charged against him beyond any reasonable doubt. I will explain that phrase in more detail later.

The burden of proving guilt beyond a reasonable doubt never shifts. It remains upon the government throughout (1920) the trial. The law never imposes upon a defendant in a criminal case the burden of calling any witnesses or producing any evidence. No defendant has to prove that he is not guilty. On the contrary, each defendant is presumed to be not guilty of the accusations contained in the indictment, and this presumption continues throughout the trial and even during the course of your deliberations in the jury room.

So the presumption of innocence is sufficient to acquit a defendant of a crime charged, unless it is overcome by evidence which satisfies the jury, beyond a reasonable doubt, of that defendant's guilt.

Now, guilt or lack of guilt is a personal thing. Each defendant on trial here has the right to the same consideration on your part as if he were being tried alone. It is your duty to give separate, personal consideration to the case of each defendant. When you do so, you should analyze what the evidence shows with respect to that individual. Whether or not each defendant on trial before you is guilty or not guilty must be determined separately with respect to him, solely on the counts charged against him, and solely on the evidence or lack of evidence presented against him.

In your deliberations you are to consider solely the testimony which you have heard from the witnesses, any stipulations of fact which the lawyers have agreed upon, the exhibits which have been received in evidence—and you may consider any lack of material evidence. You may consider nothing else.

Now I will discuss in detail the crimes charged in the indictment.

The charges in this indictment are set forth in 30 separate counts, numbered 1 through 27, and 31 through 33. Not every defendant is named in each of these counts. Further, five of these counts have been withdrawn from your consideration, for reasons which are of no concern to you. This will leave for your consideration a total of 25 counts based on several different federal criminal statutes or laws. To assist you in organizing your deliberations, I will send to the jury room with you when you retire a copy of the indictment with the counts which have been withdrawn blanked out. Thus, your copy will indicate all the counts which you must consider. I remind you—and I will do so again—that the indictment is not evidence.

Now, before I instruct you as to the statutes and laws involved here, I will describe the overall organization of the indictment.

Counts 2 through 22 charge violations of the (1922) Taft-Hartley Law and are based on specific payments alleged to have been accepted by George Stofsky, Charles Hoff, Al Gold or Clifford Lageoles from employers in the fur manufacturing industry.

Count 23 charges a violation of a federal statute which Congress has entitled the Organized Crime Control Act of 1970. I shall refer to it during this charge as the "crime control act." The act makes it a crime to conduct the affairs of an enterprise which affects interstate and foreign commerce through a pattern of criminal acts, such as violations of the Taft-Hartley Law. In this count, George Stofsky and Al Gold are charged with conducting the affairs of the Furriers Joint Council through such a pattern, in that they allegedly accepted payments from fur manufacturing employers as charged in counts 2 through 17 of the indictment.

Count 1 charges a violation of a third federal statute which makes it a crime if two or more persons conspire—that is, agree with each other—to violate any other federal law. Count 1 charges that each of the defendants on this trial conspired to violate the Taft-Hartley Law or the Crime Control Act, or both.

Count 24 is based on a fourth federal statute which makes it a crime to corruptly endeavor to influence (1923) any witness in any court of the United States. That count charges that defendants George Stofsky and Al Gold violated this statute in connection with their meeting and efforts on behalf of Jack Glasser after he was subpoenaed to appear before the grand jury investigating the fur industry.

Finally, the remaining counts are based on a federal statute which makes it a crime to wilfully attempt to evade or defeat payment of federal taxes. That charge is made against George Stofsky in counts 25 and 26, with respect

to calendar years 1970 and 1971, respectively. Count 27 makes that charge against Charles Hoff for the calendar year 1969; and counts 32 and 33 make the charge against Al Gold for the calendar years 1970 and 1971. Count 31, against Charles Hoff is one of those which has been withdrawn from your consideration, and there will be a blank in its place in the jury copy of the indictment. So you are to give that no further consideration.

You will recall that I have just stated that Counts 2 through 22 charge violations of the Taft-Hartley law. The pertinent provisions of that statute read as follows:

"It shall be unlawful for any employer or association of employers or any person who acts . . . in the interest of an employer to pay, lend, or deliver, or agree to pay, lend, or deliver, any money or other thing of value (1) to any representative of any of his employees . . . or (2) to any labor organization, or any officer or employee thereof, which represents, seeks to represent, or would admit to membership, any of the employees of such employer who are employed in an industry affecting commerce . . ."

"It shall be unlawful for any person to request, demand, receive, or accept, or agree to receive or accept, any payment, loan or delivery of any money or other thing of value prohibited by Section (a) . . ."

which is the portion of the statute I just read to you.

I shall now read each of the counts charging violations of this statute, noting as I do so those which have been withdrawn from your consideration.

On or about the dates hereinafter set forth, (1925) in the Southern District of New York, George Stofsky, Charles Hoff, Al Gold and Clifford Lageoles, the defendants, being then and there officers and employees of a labor organization, to wit, the Furriers Joint Council, which represented the employees of employers who were engaged in an industry affecting commerce, to wit, the fur products manufacturing industry, did unlawfully, wilfully and knowingly request, demand, receive and accept payments and deliveries of money from the employers as hereinafter set forth:

Count 2 charges that in or about April, 1970, Al Gold and George Stofsky as union representatives received payment of \$6000 from an employer, namely, one, Daniel Grossman.

Count 3 charges that in or about September, 1970, union representatives Al Gold and George Stofsky received payment of \$6000 from an employer, Daniel Grossman.

Count 4 charges that in or about April, 1971, union representatives Al Gold and George Stofsky received \$6000 from employer Daniel Grossman.

Count 5 charges that in or about September, 1971, union representatives Al Gold and George Stofsky received \$6000 from employer Daniel Grossman.

Count 6 charges that in or about the first half (1926) of 1969 union representatives Charles Hoff, Al Gold and Clifford Lageoles received \$375 from employer Sam Sherman.

Count 7 charges that in or about the second half of 1969 Charles Hoff, Al Gold, Clifford Lageoles as union representatives received \$375 from employer Sam Sherman.

Count 8 has been withdrawn.

Count 9 charges that in or about the first quarter of 1969 union representatives Charles Hoff, Al Gold, Clifford Lageoles received \$375 from employer Harry Hessel.

Count 10 charges that in or about the second quarter of 1969—all of this will be in the indictment which will be sent in to you—union representatives Charles Hoff, Al Gold, Clifford Lageoles received as union representatives \$375 from Harry Hessel.

Count 11 charges that in or about the third quarter of 1969 Charles Hoff, Al Gold, Clifford Lageoles received \$375 as union representatives from employer Harry Hessel.

Count 12 charges that in or about the fourth quarter of 1969 Charles Hoff, Al Gold, Clifford Lageoles received \$375 from employer Harry Hessel.

Count 13 has been withdrawn.

Count 14 charges that in or about 1969 union (1927) representative Al Gold received \$150 from employer Sol Cohen.

Count 14 charges in or about 1969 union representative Al Gold received \$500 from employer Daniel Ginsberg.

Count 16 charges that in or about December, 1968, union representative Al Gold received a payment of \$350 from employer Walter Stiel.

Count 17 charges that in or about January, 1969, Al Gold, union representative, received a payment of \$400 from employer Walter Stiel.

Count 18 charges that in or about the first third of 1969 union representative Charles Hoff received payment of \$150 from employer Carl "Jack" Schwartzbaum.

Count 19 charges in or about the second third of 1969 union representative Charles Hoff received payment in the amount of \$150 from employer Carl Jack Schwartzbaum.

Count 20 charges that in or about the last third of 1969 union representative Charles Hoff received payment in the amount of \$150 from employer Carl Jack Schwartzbaum.

Counts 21 and 22 have been withdrawn.

You must take these counts one at a time in your deliberations. You must determine with respect to each count, and with respect to each defendant named in that (1928) specific count, whether or not the Government has proved beyond a reasonable doubt each of the following elements:

- 1. That on or about the dates charged, the person named as making the payment, i.e., Daniel Grossman, Sam Sherman, Harry Hessel, Sol Cohen, Daniel Ginsberg, Walter Stiel or Jack Schwartzbaum, were fur industry manufacturers who were employing union labor who were members of the Furriers Joint Council of New York.
- 2. That on or about the date charged the defendant named, who you are considering, was an officer or an employee of the Furriers Joint Council of New York.
- 3. That the fur products manufacturing industry is an industry affecting commerce.
- 4. That the fur manufacturer named in the count you are considering made a payment, either directly or indirectly, through Jack Glasser, which was received by the defendant you are considering who is named in that count.
 - 5. That each defendant acted wilfully and knowingly. Now, there doesn't seem to be too much dispute about

the first three elements, and I charge you that, if you believe beyond a reasonable doubt the evidence offered here that Grossman, Sherman, Hessel, Cohen, Ginsberg, Stiel and Schwartzbaum each owned a firm in the fur industry (1929) and which employed union workers, then they are employers within the meaning of the statute and element 1 is satisfied.

Further, if you believe beyond a reasonable doubt the testimony offered with respect to the status of each of the defendants within the Furriers Joint Council as officers and employees—and there is no dispute about it—the second element is satisfied. And if you credit the testimony that certain of the skins used in the manufacture of fur garments were transported to New York from other states or countries, or that garments manufactured locally are sold to concerns in other states, then the third element of the crime charged in Counts 2 through 22 is satisfied.

There is sharp dispute with respect to element 4, which requires the Government to prove in each case that the particular defendant involved in that count received money from the particular manufacturer involved.

With respect to the payments allegedly made directly from a fur manufacturer to a defendant or defendants, the Government will have met its burden if it convinces you that the payment was, in fact, made in that fashion. But with respect to the counts involving alleged payments from a fur manufacturer to a defendant or (1930) defendants—indirectly through Jack Glasser—the Government's burden is to prove that the fur manufacturer named did, in fact, make the payment to Glasser, and that Glasser did in fact, turn over the payment to the defendant named. If you find only that a manufacturer paid a third party, such as Glasser, but that the third party never delivered that payment to the defendant indicated, then the Government has not met its burden with respect to element 4.

Moreover, if you find that Glasser gave money to one or more of the defendants, but that the Government has failed to establish that the money came from the named manufacturer, then the Government has not met its burden with respect to that count. On the other hand, if you find beyond a reasonable doubt that the payments specified in each of the counts in question were made and delivered, and received and accepted, as the Government's witnesses have testified here, then you may find that the fourth element of each of the Taft-Hartley counts, that is, Counts 2 through 22, has been established.

The final element the Government is required to prove in connection with Counts 2 through 22 is that, with respect to each defendant in each count which names him, he acted wilfully and knowingly. In this context, (1931) conduct that is done wilfully and knowingly is conduct that is done deliberately and voluntarily. The Government need not prove that a defendant knew about the Taft-Hartley law or acted with a specific purpose to violate that statute. It is enough to satisfy this element if the Government proves beyond a reasonable doubt that the defendant accepted money which he knew was from an employer of union labor in the fur industry and that he accepted the money voluntarily, not because of any mistake, accident or inadvertence.

I will pause a moment and let your mind relax a little bit and absorb that.

(Pause in proceedings.)

The Court: We will continue.

(1932)

In your consideration of counts 2, 3, 4 and 5—the counts which name Daniel Grossman as the fur manufacturer, and Al Gold and George Stofsky as the union officials who allegedly received payments from Grossman—

you may also consider a federal statute which provides as follows:

"Whoever commits an offense against the United States or aids, abets, counsels, commands, induces or procures its commission is punishable as a principal."

What this means is that it is not necessary for the government to show that a defendant physically committed the crime charged himself. The statute which I have just read provides that a person who aids and abets another to commit an offense is just as guilty of that offense as if he committed it himself.

Accordingly, you may find the defendant George Stofsky guilty of an offense charged in any of counts 2 through 5 if you find beyond a reasonable doubt that Al Gold committed the offense charged in the count you are considering, and further find beyond a reasonable doubt that the defendant George Stofsky aided and abetted him.

In order to aid and abet another to commit a crime, it is necessary that the accused person wilfully and knowingly associated himself in some way with the crime charged, that he wilfully and knowingly sought by some act (1933) to help make the crime succeed. Mere negative acquiescence in the criminal conduct of others, or mere presence at the scene of a crime, even with guilty knowledge, is not sufficient to establish aiding and abetting.

Count 23 charges that defendants George Stofsky and Al Gold violated the Crime Control Act, which provides in pertinent part as follows:

"It shall be unlawful for any person employed by or associated with any enterprise engaged in, or the activities of which affect, interstate or foreign commerce, to conduct

or participate, directly or indirectly, in the conduct of such enterprise's affairs through a 'pattern' of 'racketeering activity.'" This so-called 'racketeering activity' is defined in another section of the same statute as any act which is indictable under the provisions of the Taft-Hartley Law which prohibits payments from employers to union officials—the statute upon which counts 2 through 22 of this indictment are based. The same section defines the term "pattern of racketeering activity" as requiring:

"at least two acts of racketeering activity, one of which occurred after October 15, 1970, and the last of which occurred within ten years after the commission of a prior act of (such) activity."

I will now read count 23 of the indictment to you: (1934)

"On or about the dates set forth in counts 2 through 17 above, in the Southern District of New York, George Stofsky and Al Gold, the defendants, being persons employed by and associated with an enterprise engaged in, and the activities of which affected interstate commerce, to wit, an association, union and group of individuals known as the Furriers Joint Council, unlawfully, wilfully and knowingly did conduct and participate, directly and indirectly, in the conduct of such enterprise's affairs, through a pattern of racketeering activity, to wit, acts constituting violations of Title 29, United States Code, Section 186—that is the Taft-Hartley Law—which are set forth in counts 2 through 17 of this indictment and are incorporated by reference as if fully set forth herein."

Now, in order to establish that George Stofsky or Al Gold committed the crime charged in count 23, the government must prove with respect to the defendant you are con-

sidering each of the following essential elements beyond a reasonable doubt:

- 1. That he committed any two of the offenses in violation of the Taft-Hartley Law with which he is charged. In other words, with respect to George Stofsky, that he committed, or aided and abetted in the commission of, at least two of the crimes charged in counts 2, 3, 4 and 5; (1935) and with respect to Al Gold, that he committed at least two of the crimes charged in counts 2 through 17.
- 2. That the crimes, if any, which you find he committed occurred with ten years of each other and that one of the crimes you find he committed took place after October 15, 1970.
- 3. That the crimes, if any, which you find he committed were connected with each other by some common scheme, plan or motive so as to constitute a pattern and were not merely a series of disconnected acts.
- 4. That the crimes, if any, which you find he committed were in the course of his employment by the Furriers Joint Council; and, finally,
- 5. That the Furriers Joint Council was engaged in, or that its activities affected, the interstate or foreign commerce of the United States.

Both George Stofsky and Al Gold have asserted that they did not commit any of the violations of the Taft-Hartley Law set forth in counts 2 through 17 of the indictment. If you find that to be so, then there is no way for the government to sustain its burden with respect to count 23.

In order to sustain its burden with respect to count 23, the government, at the threshold, must have proved (1936) beyond a reasonable doubt that the defendant you are con-

sidering committed at least two of the acts with which he is charged in counts 2 through 17.

And even if you have found beyond a reasonable doubt that the defendant you are considering committed at least two of the crimes set forth against him in counts 2 through 17, at least one of the crimes you have found must have occurred after October 15, 1970, or else the government has not met its burden. In this connection, I remind you that the only acts included in counts 2 through 17 alleged to have occurred after October 15, 1970, are set forth in counts 4 and 5, the counts involving alleged payments from Grossman in 1971.

Further, as required by element 3, even if you find as against a defendant named in count 23 the requisite two crimes committed within the requisite time period, you cannot convict him on this count unless you also find beyond a reasonable doubt that these crimes were connected with each other, that is, that they were in furtherance of the same goal, or served the same purpose, or were part of the same scheme, or had something else in common, and were not simply a series of disconnected acts.

Element 4 requires that the acts, if you find them to have been committed, must be proved to have been (1937) committed in the course of the defendant's employment by the Furriers Joint Council. If you find the requisite underlying criminal acts and if you believe that the purpose of those payments was as alleged by the government witnesses at this trial—i.e., to buy the privilege of circumventing the collective agreements, or to gain some other relief from union pressure—you may find that this element of the crime charged in count 23 has been satisfied.

Just as the government must prove an element of interstate commerce in counts 2 through 22, the government

must prove a similar element with respect to count 23. Again, if you believe the evidence which has been presented that a substantial number of skins used by the union employers specified in counts 2 through 17, in the manufacture of fur garments, were brought into New York from other states or other countries and that numerous fur industry manufacturers who employed union labor sold their finished garments outside New York State, you may find this element satisfied.

I am now going to go through the conspiracy count, and then we are going to take a 15-minute break before I resume.

The first count of this indictment charges a conspiracy. It charges that each of the defendants, and (1938) others, conspired to violate two federal statutes—the Taft-Hartley Law and the Crime Control Act.

A conspiracy to commit a crime is an entirely separate and different offense from substantive crimes which are said to be the objects of the conspiracy. The essence of the crime of conspiracy is an agreement, or understanding, to violate other laws. Thus, if a conspiracy exists, even if it should fail of its purpose, it is still punishable as a crime. Consequently, with respect to this conspiracy count, there is no need for the government to prove an actual violation of the two federal laws involved.

However, the crime of conspiracy does have several elements which the government must prove beyond a reasonable doubt as to each defendant.

First, the government must prove that the single, overall conspiracy charged in the indictment existed.

Second, that the defendant you are considering was a wilful, knowing party to the conspiracy.

Third, that at least one of the overt acts set forth in the indictment occurred.

And, fourth, that the defendant under consideration knew that the activities of the Furriers Joint Council affected interstate or foreign commerce.

The gist of the crime of conspiracy is the unlawful (1939) combination or agreement to violate the law. A conspiracy has sometimes been called a partnership in criminal purpose in which each member becomes the agent of every other member.

Now, this indictment alleges that some time between January 1, 1967, through December, 1972, there existed between at least two of the defendants an unlawful conspiracy, or agreement, to request, demand or accept payments of money from union shop manufacturers of fur products in return for permitting said manufacturers to subcontract out fur manufacturing work to non-union contractors, in spite of the terms of collective bargaining agreements between said union shop manufacturers and the Furriers Joint Council. Therefore, the indictment alleges that one of the objectives of the agreement was to violate the Taft-Hartley Law.

The indictment also alleges that there was a second objective of the conspiracy, and that was to conduct, and participate in the conduct of the union's affairs through a pattern of racketeering activity, in violation of the Crime Control Act.

To establish that such a conspiracy existed, the government is not required to show that two or more of the defendants entered into a formal agreement, stating (1940) that they have formed a conspiracy to violate the law and setting forth details of the plans, the means by which the unlawful project was to be carried out, or the part to be played by each conspirator. It is sufficient if it is shown beyond a reasonable doubt that two of the defendants, in any manner, through any contrivance, came to a common

understanding to violate either, or both, of the federal laws set forth as the objectives of the conspiracy.

(1941)

However, I instruct you that although the agreement to violate the Taft-Hartley law, the first objective, may be found in an agreement to request, demand or accept a payment of money from a fur manufacturer employing union labor, the agreement to violate the Crime Control Act, the second objective, requires a further finding that the agreement contemplated that at least two payments of money would be requested, demanded or accepted, and that at least one of those payments would occur after October 15, 1970, and that the two other payments would be within ten years of each other, and, finally, that those payments would be connected with each other by some common scheme.

It is not necessary that the Government prove that the conspiracy existed throughout the entire period alleged in the indictment. It is sufficient if it proves that the single, overall conspiracy charged in the indictment existed for a substantial part of that period.

In determining whether or not an unlawful agreement, as charged in the indictment, was actually formed, you may weigh the acts and conduct of the alleged conspirators, and the reasonable inferences to be drawn from such evidence, which you find to have been done to carry out an apparent criminal purpose. Thus, to make this determination, you may weigh the acts and conduct of the (1942) defendants, all of whom the Government alleges were conspirators, and also of the persons alleged by the Government to be co-conspirators in the overall scheme.

The Government alleges that Jack Glasser, Daniel Grossman, Sam Sherman, Ben Sherman, Harry Hessel, Sol Cohen Daniel Ginsberg, Walter Stiel, Jack Schwartzbaum, Harry

Koch, David Koster and Samuel Baker were co-conspirators with the defendants in the conspiracy alleged.

If, upon consideration of all the evidence which is applicable, you find beyond a reasonable doubt that the minds of at least two of the conspirators met in any understanding way and that they agreed to form a conspiracy, the gist of which I have explained to you to work together in furtherance of the unlawful objectives alleged then proof of the existence of the conspiracy is complete.

However, if upon consideration of all of this evidence, you find not a single, overall conspiracy or agreement that union officials and employees would from time to time accept money from fur manufacturers in return for the privilege of circumventing the Collective Agreements, but, instead, you find several separate and distinct conspiracies, each independent of each other, (1943) isolated, with different or more limited objectives, then you have not found the single overall conspiracy to have existed. In that event, I instruct you that you must acquit all of the defendants on Count 1, the conspiracy count. Whether there was one conspiracy, or many conspiracies, or no conspiracy at all, is a question of fact for you to determine in accordance with these instructions.

If you do conclude that a conspiracy as charged did exist, you must next determine whether each defendant was a member, and, further, whether each of the alleged co-conspirators was a member, and, further, whether each joined in the conspiracy with knowledge of its unlawful purposes.

To find membership in a conspiracy, you must find that a person knowingly and wilfully joined therein. Thus, mere knowledge of the existence of the conspiracy, or of any . Jani

Charge of the Court

illegal act on the part of an alleged co-conspirator, or mere association with one or more conspirators, is not sufficient to establish membership in the conspiracy. Nor is it sufficient if a person who has no knowledge of the conspiracy, happens to act in a way which furthers some object or purpose of the conspiracy.

The Government must establish beyond a reasonable (1944) doubt as to each alleged conspirator that he entered into the conspiracy aware of its basic purposes and objects, with a specific criminal intent, that is, deliberately and intentionally, and with the purpose of disobeying or disregarding the law.

It is not necessary that a person be fully informed as to the details, or the scope, of the conspiracy in order to justify an inference of knowledge on his part. Even if one joined the conspiracy after it as formed, and was engaged in it to a degree more limited than that of other conspirators, he is equally culpable, so long as you have found he was a conspirator. Each member of a conspiracy may perform separate and distinct acts at different times and different places. Each conspirator is, nonetheless, held responsible for all that is done by his co-conspirators in furtherance of the conspiracy, even before he joined, and all that may be done thereafter during the existence of the conspiracy and while he remains a member.

A conspiracy once formed is presumed to have continued until its objectives are accomplished or there is an affirmative act of termination by its members, or it is otherwise terminated, as, for example, by arrest. So, too, once a person is found to be a member of a (1945) conspiracy, he is presumed to continue his membership until its termination, unless there is affirmative proof of withdrawal or disassociation by that conspirator.

When people enter into a conpiracy to accomplish an unlawful end, they become agents for one another in carrying out the conspiracy. Hence, the acts and deliberations of one in the course of the conspiracy and in furtherance of the common purpose, are deemed to be the acts of all, and all are responsible for such acts.

Accordingly, if you find, in accordance with these instructions, that the alleged conspiracy existed and that some or all of the defendants and the alleged co-conspirators were participants in it, then the acts done and the statements and declarations made in furtherance of the conspiracy by the persons found by you to have members of the conspiracy, may be considered against any defendant whom you also find was a member, even though such acts or declarations were made in the absence and without the knowledge of the defendant.

I warn you again, however, that before this evidentiary principle can be brought into play you must find that both the person whose acts and declarations you are considering and the defendant you are considering, have been found by you to be wilfull, knowing members of (1946) the same overall conspiracy charged in the indictment.

As to the third element, the overt act requirement, the overt act need not be in itself a criminal act. It is one of the elements of a conspiracy charge because it demonstrates that the conspirators have gone beyond the stage of merely thinking about an illegal goal, which is not a crime. An overt act can be any act, such as, for example, a meeting, as long as it is an act performed in furtherance of the conspiracy. The Government need not prove that all of the overt acts alleged in the indictment were performed, but it must prove that at least one of the acts was performed and that it was in furtherance of the conspiracy, and that it occurred during the period of the conspiracy.

Let me just read the three overt acts which are set forth in the indictment. The indictment reads:

OVERT ACTS.

"In furtherance of said conspiracy and to effect the objects thereof, the following overt act, among others, were committed by the defendants in the Southern District of New York:

"1. In or about April 1970, the defendant Al Gold received \$6000 (\$6000) from Daniel Grossman."

Overt Act No. 2 has been withdrawn.

"3. In or about September, 1970, the defendant Al Gold received \$6000 (\$6000) from Daniel Grossman."

Overt Acts 4 and 5 have been withdrawn. And reading the last one:

"6. In or about February, 1971, the defendants George Stofsky and Al Gold met with Daniel Grossman."

I instruct you that, as a matter of law, the Borough of Manhattan is within the Southern District of New York, where the Government alleges these acts occurred.

Now, the last of the elements. The fourth element the Government is required to prove under the conspiracy count is that the defendant under consideration knew that the activities of the Furriers Joint Council affected interstate or foreign commerce. As I charged you with respect to Count 23, there has been evidence that a substantial number of skins used by the employers specified in Counts 2 through 17, in the manufacture of fur gar-

ments, were brought into New York from other states and other countries and that those manufacturers sold their finished garments to concerns located outside New York State. If you believe this evidence, and if you further find beyond a reasonable doubt that the defendant you are considering was aware of such facts from his involvement in the fur industry, that is (1948) sufficient for you to find that the defendant knew that the activities of the Furriers Joint Council affected the interstate or foreign commerce of the United States.

We are going to take a recess here. I don't want you to start deliberating yet nor assessing nor weighing the evidence. There is more to the charge. Do not form nor express any opinion yet.

Mr. Foreman, will you lead the jury out. We will take a 15-minute recess.

(Recess.)

The Court: We will now proceed to the count charging obstruction of justice. Then we have the income tax counts and then I have some further general instructions for you.

Count 24 of the indictment charges defendants Stofsky and Al Gold with violating a Federal law against obstruction of justice. The pertinent provisions of the statute read as follows:

"Whoever corruptly . . . endeavors to influence . . . any witness, in any court in the United States . . . or corruptly . . . influences, obstructs or impedes, or endeavors to influence, obstruct, or impede, the due administration of justice"

is guilty of a crime.

(1949)

I shall now read Count 24 of the indictment:

"In or about April 1972, in the Southern District of New York, George Stofsky, and Al Gold, the defendants, unlawfully, wilfully, knowingly and corruptly endeavored to influence, obstruct and impede the due administration of justice, and that they requested of one Jack Glasser, who was then under subpoena before a Federal grand jury sitting in the Southern District of New York, that he not testify before that grand jury which was then investigating alleged violations of Title 29, United States Code, Section 186(b) by the defendants and others, in return for which the defendants offered (1) to obtain and pay for a lawyer for Glasser, in connection with said investigation and (2) provide their support and approval for a fur industry pension for Glasser."

In order to find that George Stofsky or Al Gold committed the crime charged in Count 24 the Government must have demonstrated to you beyond a reasonable doubt each of the following elements as to the defendant under consideration.

First, that the defendant knew that a proceeding was pending in a court of the United States.

(1950)

Second, that the defendant knew that Jack Glasser was expected to be called as a witness in the proceeding.

Neither of these elements is in dispute. Each of the defendants who are charged in this count have taken the witness stand and said that Jack Glasser indicated prior to the acts in question here that he had been subpoenaed to appear before a Federal grand jury sitting in the Southern District of New York.

The third element is in great dispute, however. With respect to it, the Government must prove that the defendant you are considering corruptly endeavored to influence Jack Glasser not to testify in the grand jury proceedings.

Now, the indictment alleges that the means of inducement offered by the defendants named in this count was two-fold:

First, that they offered to obtain and pay for a lawyer for Glasser in connection with the pending investiation; and, second, that they offered to provide their support and approval for a fur industry pension for Glasser.

The crux of the crime charged is the "corrupt endeavor." And it turns on whether or not you find, (1951) from all the evidence adduced as to this count, that the defendant under consideration voluntarily and intentionally and with a bad purpose of influencing Jack Glasser's testimony before the grand jury, offered and made available assistance in these matters as alleged.

You do not have to find that the defendant under consideration succeeded in an endeavor to influence Glasser. Any effort or endeavor, whether successful or not, which is made for the purpose of corruptly influencing a witness, is condemned by the statute. "To endeavor" means to strive, to work for a certain end. Also, the law does not make guilt dependent upon the degree of receptivity or susceptibility of the witness' mind. Nor does it depend upon the degree to which he responds or does not respond to the corrupting influences.

However, I instruct you that it is not a crime to be asked for the name of a lawyer, or to arrange a meeting with a lawyer for a witness, or to offer support for a pension, or to advise someone to take the Fifth Amendment, providing such offer or advice is made without any corrupt

intent to influence the witness. It is for you, and you alone, to decide whether the evidence in this case leads you to conclude that both or either of the defendants charged in this count corruptly endeavored to [sic].

(1952)

Also, I instruct you that mere presence at a meeting where a corrupt endeavor may be made, even with knowledge that it is being made, is not enough to sustain a conviction in this court. You must find that the defendant you are considering not only had the requisite corrupt intent, but endeavored in some way to further the crime.

Now, there is one more matter you must decide with respect to Count 24. You will recall there is testimony that on April 4, 1972, after Glasser was served with the subpoena to appear before the grand jury, he called Stofsky in Manhattan and arranged a meeting in Queens at Tiffie's Restaurant. It is at the meeting in Queens where the defendants Stofsky and Gold are said to have initiated the corrupt endeavor, although there is testimony from which you could infer that at Stofsky's instruction, Gold placed a phone call to the union lawyer in Manhattan. There is other testimony that a series of phone calls occurred with respect to a lawyer for Glasser the following day in Manhattan.

Now, the Government alleges that the unlawful endeavor to influence Glasser took place in the Southern District of New York. In order for the Government to sustain this charge, it must show that at least some act (1953) connected with the corrupt endeavor, if you find such an endeavor occurred at all, happened in the Southern District of New York.

I have already told you that Manhattan is in the Southern District of New York. I now instruct you as a matter of law that the Borough of Queens is not. And, if

you do not find that the Government has shown some act connected with a corrupt endeavor to have occurred in Manhattan, even if you find such an endeavor to have been made in Queens, you may not convict either of the defendants charged in this count.

Now, the defendants George Stofsky, Charles Hoff and Al Gold are charged with having violated provisions of Federal law which provide in pertinent part:

> "Any person who wilfully attempts in any manner to evade or defeat any tax imposed by this (statute) or the payment thereof . . . shall be guilty of a crime."

Count 25 charges that the defendant Stofsky caused to be filed a false and fraudulent joint income tax return on behalf of himself and his wife for the calendar year 1970, where it was stated that their taxable income was \$11,579.55, and that the amount of tax due and owing was \$2,221.67. The Government claims that he knew that (1954) his taxable income for that year was \$18,079.55, upon which they owed to the United States an income tax of \$3,938.33.

Count 26 charges that the defendant Stofsky caused to be filed a false and fraudulent joint income tax return for the calendar year 1971 where it was stated that their taxable income was \$10,451.84 and that the amount of tax due and owing was \$1,919.40. The Government claims he knew that his taxable income for that year was \$16,451.84 upon which they owed to the United States income tax of \$3,386.52.

Count 27 charges that defendant Charles Hoff caused to be filed a false and fraudulent joint income tax return on behalf of himself and his wife for the calendar year 1969 where it was stated that their taxable income was

\$17,800.41 and that the amount of tax due and owing was \$4,140.52. The Government claims he knew their taxable income was \$19,250.41 upon which they owed to the United States an income tax of \$4,587.12.

There is no Count 28 or 29 or 30 in the indictment. Count 31 has been withdrawn from your consideration.

Count 32 charges that defendant Al Gold caused to be filed a false and fraudulent joint income tax return (1955) on behalf of himself and his wife for the calendar year 1970 where it was stated that their taxable income was \$5,479.40 and that the amount of tax due and owing was \$924.08. The Government claims that he knew their taxable income was \$11,854.40, upon which they owed to the United States an income tax of \$2,283.67.

Count 33 charges that defendant Al Gold caused to be filed a false and fraudulent joint income tax return for the calendar year 1971 where it was stated that their taxable income was \$6,220.52, and the amount of tax due and owing was \$1,041.90. The Government claims that he knew their taxable income was \$12,220.52 upon which they owed to the United States an income tax of \$2,315.13.

Before I describe for you the elements of the crime charged in each of these counts, I want to tell you that each defendant is charged with income tax evasion solely with respect to money or moneys he is alleged to have received as set forth in the counts between 2 through 22, which charge that he received specific payments from fur manufacturers. Therefore, with respect to the charges of income tax evasion against each defendant, if you have found that he did not accept any of the unlawful payments he is alleged to have received during the corresponding calendar year, you must acquit the defendant of the tax (1956) evasion charge against him for the corresponding year.

If you should, on the other hand, find beyond a reasonable doubt that the defendant you are considering with respect to tax evasion did accept a payment as set forth in one of the counts charging acceptance of payments for the corresponding calendar year, then, and only then will be you be required to determine whether or not the Government has proved the following elements of tax evasion beyond a reasonable doubt.

In order to convict a defendant on a charge of income tax evasion, the Government must establish beyond a reasonable doubt each of the following three elements:

First, that a substantial amount of additional tax was due and owing from the defendant you are considering for the calendar year in question.

Second, that the defendant made an attempt to evade or defeat the tax.

Third, that the defendant made the attempt knowingly and wilfully, with the specific intent of concealing the true taxes known by him to be due.

With respect to the first element, the Government must prove that the defendant had taxable income which the defendant failed to report on his tax return, and that had he reported such income, there would have been a substantial (1957) tax due and owing to the United States.

The Government is not required to prove the precise amounts of unreported income alleged in the different tax counts of the indictment. It is enough if the proof establishes that a substantial part of a tax liability was evaded. In that connection, I remind you that the charges of tax evasion are directedly related to the charges against each defendant set forth in Counts 2 through 22. If you have found a defendant guilty of accepting some of those payments, but not others, then you must examine the corres-

ponding tax evasion charge with that in mind in order to determine whether the Government has proved beyond a reasonable doubt that a substantial additional amount of income tax was due and owing from that defendant for that particular calendar year.

What is "substantial" is something which varies from case to case and depends on how the unreported income, if you find any, compares to the reported income, and how large the tax would be on the additional income if it had been reported. Put another way, there can be no exact guide line as to how much is a substantial amount of tax owing. If you are convinced beyond a reasonable doubt that there was a deficiency in tax, it is for you to decide whether or not the amount is, to your minds, "substantial." (1958)

The second element requires the Government to prove the commission of an act, an attempt to evade or defeat the tax. The act alleged in each of the tax evasion counts in this indictment is the filing of a false income tax return.

In order for the Government to prove this element it must show that when the defendant you are considering filed his tax return for the calendar year in question, he knew that he had income in that year which was taxable and which he was required by law to report. And the Government must prove that he attempted to evade or defeat the tax on that amount by knowingly and purposefully failing to state and report all of the income which he knew he had during that calendar year, and which he knew it was his duty to state and report on that return.

The third element which you must determine is whether the defendant's attempt to evade or defeat taxes was wilful. If you find that a defendant understated his income for a calendar year in question, but that he did not do so wilfully

with an intent to evade taxes, you must acquit the defendant.

The Government must establish beyond a reasonable doubt that a defendant acted intentionally and deliberately with the specific intent of concealing the (1959) true taxes known by him to be due. Actual knowledge that the returns filed were false and fraudulent, and proof of filing in spite of that knowledge would show that he was acting wilfully. You may infer wilfulness from any conduct which you find to have the likely effect of misleading or concealing, providing you find that the tax-evasion motive played a part in such conduct. In this connection you should know, however, that, generally speaking, the receipt of money during a calendar year, alone, standing by itself, does not necessarily mean that at the time a particular defendant received the money he had formed the requisite specific intent to evade paying tax on that money. A good faith misunderstanding of his liability for taxes, or as to his duty to report certain income is not an attempt to evade or defeat taxes.

In order to meet its burden, the Government must prove beyond a reasonable doubt that the defendant knew what he was doing and wilfully attempted to evade the tax, that he made it his conscious purpose to engage in conduct designed to defraud the Government of the true tax due.

Now, there is one further matter which you are required to decide with respect to Count 32—which is concerned with the alleged tax evasion of defendant Al (1960) Gold for the calendar year 1970. The Government alleges that the attempt to evade taxes occurred in the Southern District of New York. The evidence indicates that defendant Gold filed his return in Brooklyn for that calendar year. I instruct you as a matter of law that Brooklyn is not in the Southern District of New York. Therefore,

even if you find defendant Gold guilty of taking the unlawful payments for which he is charged in 1970, and, further even if you find that the Government has sustained its burden with respect to Count 32 beyond a reasonable doubt, you must acquit on this count unless you also find that the Government has shown that he had formed the requisite specific intent to evade taxes at the time that he received the money in the Southern District of New York and that when he filed a false and fraudulent return for the 1970 calendar year in Brooklyn, he was carrying through with that earlier formed intent.

Now, this completes the portion of this charge to you with respect to the essential elements of each of the crimes charged in this indictment. I remind you again that each defendant on trial here has the right personal consideration, and that you have the duty to give it to him. With respect to each crime that a defendant is charged with here, you must determine whether or not (1961) the Government has proved each and every element, as I have outlined the elements to you, beyond a reasonable If you find that the Government has failed to prove any element of any crime charged against any defendant beyond a reasonable doubt, then it is your duty to return a verdict of not guilty as to that defendant on that count. If you find that the Government has met its burden of proving each and every element of any crime charged here against a specific defendant, then it is your sworn duty to return a verdict of guilty as to that count, as to that defendant.

As I have said at the beginning of this charge, in your determinations of whether the Government has proved, beyond a reasonable doubt, that each defendant committed the crimes with which he is accused, you may consider only the testimony that you have heard from the witness stand,

the exhibits in evidence, and any stipulations which counsel may have entered into. In addition, you may consider any lack of credible evidence. But you may consider nothing else.

The purpose of this portion of my charge to you is to provide some guide lines on the standards you should use in determining what is and is not evidence and how to go about assessing the evidence.

(1962)

First, there are a few items that are not evidence and which may not be considered by you.

If during the course of the trial a question was asked and an objection interposed, and I sustained the objection, you are to disregard the question and any alleged facts contained in the question. If there was an answer to that question, you are also to disregard the answer. Similarly, if I ruled that an answer be stricken from the record, you are to disregard the answer and the question in your deliberations. These items are not evidence and, therefore, cannot be considered by you in any respect.

Also, as I told you earlier, an indictment is not evidence. It is simply a technique by which persons accused by a grand jury of crimes are brought to trial. Whether the persons accused are guilty or not guilty of the crimes charged is determined by a trial jury such as you are. You will be permitted to have a copy of the indictment with you in the jury room, but you must bear in mind that the sole purpose for which you have it, is to provide you with a statement of what is alleged with respect to these defendants. It has no probative value.

Further, there is some testimony and exhibits in evidence which have been received and which you may consider only for limited purposes. Thus, as you were (1963)

instructed when the testimony was admitted, Defendants' Exhibit G, the photocopies from Ben Hecht's diary which defendant Hoff says Glasser passed to him from time to time—have not been admitted for the truth of what may be asserted therein, but for the fact asserted by defendant Hoff that he received them from Glasser.

Also, with respect to the testimony of the Government's rebuttal witness, Henry Katcher, it is very important that you consider that testimony only for the purpose offered. It was offered solely with respect to the credibility of the testimony of def ndant Stofsky and defendant Hoff which was presented at this trial. other words, it was received only with respect to the question of whether those defendants told the truth on the witness stand here. You may not under any circumstances treat Katcher's testimony as relevant to the essential elements the Government must prove to sustain the charges against defendant Stofsky or Hoff. You may consider it only with respect to their credibility. Further, I charge you that Katcher's testimony may not be considered for any purpose whatsoever against any other defendant on trial here.

Likewise, there has been evidence adduced at this trial that some of the witnesses may have made statements (1964) at some prior time—for instance, before the grand jury—which may appear to be inconsistent with the witnesses' testimony at this trial. Those earlier statements have been admitted only to impeach, that is, to call into question, the credibility of the witness. They have not been admitted to establish the truth of what is asserted in those earlier statements. Such prior statements have been presented here by counsed in an effort to indicate that what the witness has said on trial here may not be reliable because of faulty memory or for any other reason or motive which you may determine from such evidence.

It is for you to decide whether or not these statements are contradictory and, if so, what effect such inconsistency has on the credibility of the witness.

Finally, there is evidence which has been admitted only with respect to a certain defendant and a certain count. Thus, Jack Glasser's testimony with respect to the Baker payments he says he made to Hoff in 1969, have been admitted only with respect to the count charging that defendant with tax evasion in the calendar year 1969—Count 27. You may not consider this portion of Glasser's testimony with respect to any other count in the indictment, and you may not consider it with respect to any other defendant for any purpose whatsoever.

One more matter with respect to the general nature of the evidence in this case. You should bear in mind that there is no duty upon either side to call a witness or to introduce exhibits which would merely repeat evidence already before you. And you should also bear in mind that the law never imposes on a defendant in a criminal case the burden or duty of calling any witness or of producing any evidence.

You have heard reference made to direct evidence and to circumstantial evidence. Let me explain the difference between the two.

Direct evidence is where a witness testified to what he saw, heard or observed, what he knows of his own knowledge, something which comes to him by virtue of his senses. That is direct evidence.

Circumstantial evidence is evidence of facts and circumstances from which one may infer connected facts which reasonably follow in the common experience of mankind. Stated somewhat differently, circumstantial

evidence is a fact or a series of facts in evidence which have a logical tendency to lead the mind to a conclusion that another fact exists—even though there is no direct evidence to that effect.

To take a simple example often used in this (1966) court to illustrate what is meant by circumstantial evidence, assume that when you entered the Courthouse this morning the sun was shining brightly outside and it was a clear day. Now, assume further that in this courtroom the blinds are drawn and the drapes are drawn so that you cannot look outside. Now, as you are sitting in the jury box, and despite the fact that it was dry and clear when you entered, someone walks in with an umbrella dripping water, followed in a short time by a man with a raincoat which is wet. You cannot look out of the courtroom and see whether it is raining or not, and if asked, "Is it raining?" you cannot say that you know it directly of your own observation. But upon the combination of facts given, even though when you entered it was not raining outside, it would be reasonable and logical for you to conclude that it was raining now. arrive at this conclusion from circumstantial evidence. other words, you would infer on the basis of reason and experience from one or more established facts-in this example the dripping umbrella and the wet raincoatthe existence of some further fact: That is, that it is now raining.

Now, as you can see, the matter of drawing inferences from facts in evidence is not a matter of guesswork or speculation. An inference is a logical, factual (1957) conclusion which you might reasonably draw from other known facts. Much of your work in the jury room, I believe you will find, will be to marshal the evidence before you and to arrive at certain logical, factual con-

clusions by inference. There are times—and you will find them in this case—when different inferences may be drawn fom the same facts, whether proved by direct or circumstantial evidence. The Government asks you to draw one set of inferences; the defendants ask you to draw another entirely different set of inferences. It is for you, and you alone, to weigh the evidence and to decide what inferences you will draw from the facts as you find them to be in this case.

You will recall that when I set forth the essential elements of each of the crimes charged in this indictment, that in every instance one of the essential elements involved a particular state of mind. Thus, the Government is required to prove in each instance that the defendant you are considering knew what he was doing and did it voluntarily and deliberately. With respect to some counts, the Government must prove that, plus a very specific intent to do something, for instance, to corruptly endeavor to influence a witness, or to conceal income due and owing.

(1968)

Now, none of these states of mind—involving as they do, the thought process—can be put down on a piece of paper and offered into evidence. It is generally impossible to ascertain or prove directly what was the operation of the mind or the intentions of any person. These are matters of inference, as I have just explained it to you, which you may make from the facts—as you find them to be—after consideration of the testimony, stipulations, and the exhibits in evidence in this case. You must weigh a person's conduct, his acts, his statements, and all the surrounding circumstances, and then apply your common sense, just as you would if called upon to assess the state of mind and intent of anyone in the every-day affairs of your life.

Now, there are two remaining key concepts which you must understand:

First, how to judge the credibility of witnesses; and, next, what is meant by "reasonable doubt". You, as jurors, are the sole judges of the credibility of the witnesses and the weight their testimony deserves. You know, of course, that there is no automatic way to decide who is telling the truth and who is not. Credibility can be equated with believability. If a witness is credible, you say he is believable.

(1969)

You should carefully scrutinize all the testimony offered—both on direct and cross-examination, redirect, recross, et cetera—with due regard to the circumstances under which each witness has testified. You must consider every matter in evidence which tends to show whether or not that witness is worthy of your belief. Consider the witness' ability to observe the matters as to which he has testified, and whether or not the witness impresses you as having had an accurate recollection of these matters.

When judging credibility, it is important that you consider any relation any witness may bear to any side of the case, the manner on which each witness might be affected by the verdict, and any other motive which the witness may have for testifying as he has. You should weigh all of the evidence and determine the extent to which, if at all, each witness is either supported or contradicted by other evidence in the case.

Now, in this case several of the Government witnesses have been granted immunity with respect to their testimony—we call it "use" immunity. I am referring to Mr. Grossman, Mr. Jaffee, Mr. Ginsberg, and Mr. Katcher. What this means is that although each of the thre first named during his testimony here admitted committing crimes

(1969a) involved with the charges in the indictment, the Government may not use his testimony against him in any subsequent criminal proceeding. If the Government is to develop evidence to prosecute him for these crimes, it will have to develop its case independent of the witness' testimony here or any evidence that might be derived from it. (1970)

Further, Jack Glasser had been granted what we call "transactional" immunity. What this means is that the government cannot prosecute him at all for the crimes he has admitted from the witness stand at this trial. The impact of a grant of immunity must be weighed carefully by you, and you should scrutinize the testimony of these witnesses with special care. You should seek to determine from all of the relevant evidence with respect to this matter whether or not their desire for immunity, or the grant of immunity, might have contributed to a motive to testify falsely.

For instance, with respect to Glasser, the defendants have suggested two possible motives: one, that he bears a grudge against the defendants and is using his grant of immunity as a shield behind which to "get them"; and/or, second, that Glasser and other witnesses, faced with possible criminal prosecution, have exchanged testimony which they think the government wants to hear, in return for immunity with respect to their own crimes.

The government counters with the fact that witnesses testifying under immunity face the same risk of a perjury prosecution should they give false testimony, just as any other witness at this trial, and, in fact, that the purpose of a grant of immunity is to encourage (1971) otherwise reluctant witnesses to testify truthfully. It is for you, and you alone, to assess the motives of the witnesses in this case.

Also, in this case each of the defendants has taken the witness stand. There is no compulsion or obligation upon the defendant to testify or to produce any other evidence in a criminal trial, as I have told you. But when a defendant does take the stand, he is tested by all the same rules and guides that any other witness is tested by. You know, of course, that a defendant is interested, vitally interested, in the outcome of the case. Interest is a factor which you must take into consideration when assessing the testimony of each and every witness who has taken the stand, whether presented by the government or by the defense.

The ultimate question for you to decide in passing on the credibility of any witness in this trial is: Did the witness tell the truth to you? It is for you, and you alone, to say whether his testimony at this trial was truthful or untruthful, in whole or in part. If you find that any witness has wilfully testified falsely as to any material matter, you may reject the entire testimony of that witness, or you may accept such portion of it as you believe to be true.

Now, when you have made your assessment as to (1972) the credibility of each witness and you have decided what weight you will give to all of the various and voluminous pieces of evidence before you, and you have drawn the inferences you must draw from the evidence—or lack of it—you are finally called upon to decide with respect to each defendant and to each crime which he is charged, whether or not the government has borne its burden of proving each and every element of the crime charged beyond a reasonable doubt.

And so the question arises, what is reasonable doubt? The words, of course, suggest the answer. It is doubt based on reason which arises from the evidence or from

the lack of evidence in this trial. It is not caprice, or whim or speculation. It is not an excuse to avoid the performance of an unpleasant duty. Nor is it sympathy for any party.

Reasonable doubt is doubt which appeals to your reason, your judgment, to your common sense and your experience. It is the kind of doubt which would cause prudent men and women to hesitate to act in matters of utmost personal importance to themselves.

If after a fair and impartial consideration of all the evidence you have such a doubt as would cause you, as prudent persons, to hesitate to act in matters of importance to yourselves, then you have a reasonable doubt (1973) and it is your duty to acquit. If, on the other hand, after a fair and impartial consideration of all the evidence, you do not have a doubt which would cause you to hesitate to act in matters of importance to yourselves, then you have no reasonable doubt and it is your duty to convict.

A reasonable doubt does not mean positive certainty beyond all possible doubt. The reason is that in this world of ours it is practically impossible for a person to be absolutely and completely convinced of any controverted fact which by its nature is not susceptible of mathematical certainty. In consequence, the law is such that in a criminal case it is enough if proof that a defendant is guilty is established beyond a reasonable doubt, not beyond all possible doubt.

The most important part of this case is the part which you now as jurors are about to play, because it is you, and you alone, who will decide whether each defendant is not guilty or guilty as charged. In your determinations, you are not to consider or in any way speculate about the punishment which a defendant may receive if found guilty. It is the function of the jury to deliberate and determine

whether a defendant is guilty or not guilty on the basis of the evidence and the instructions of the court. It is the function of the judge to determine the disposition (1974) of each defendant's case thereafter.

I know you will try the issues that have been presented to you according to the oath which you have taken as jurors. In that oath you promised you would well and truly try the issues joined in this case and a true verdict render. If you follow that oath and try the issues without confusing your thinking with emotions, you will arrive at a just verdict.

As you deliberate, please be careful to listen to the opinions of other jurors, as well as to ask for an opportunity to express your own views. No one juror holds the center of the stage in the jury room. No one juror controls or monopolizes deliberations.

You must all express your views and exchange views. If you become convinced that your original view was wrong with respect to any matter, don't be afraid to change your vote because of pride in your original opinion or in reaction to the stubbornness of another person. On the other hand, do not surrender your honest belief solely because of the opinion of your fellow jurors, or because you are outnumbered.

You understand, of course, that in a criminal case in this court your verdict on each count, as to each defendant, must be unanimous. That is, it must be joined in (1975) by each and every one of you.

In arriving at a verdict, you must reach a verdict on each of the counts for each of the defendants named therein, and the form of the verdict for each should be either not guilty or guilty. Thus, you must, in total, render a sum of 46 verdicts: 9 with respect to defendant Stofsky;

11 with respect to defendant Hoff; 19 with respect to defendant Gold; and 7 with respect to defendant Lageoles.

As I have told you, I am going to send into the jury room, as soon as you retire to begin your deliberations, a copy of the indictment. I remind you again, that it is not evidentiary material of any kind. And the only use you may make of it—and the only reason that I am sending it to you—is to provide you with an outline of which defendant is charged in which counts. You may not consider it for any other purpose.

During your deliberations you may send for any exhibits in evidence that you may desire to review. You may request that any testimony be read back to you. You may request any portion of this charge to the jury to be read again to you. All of your requests are to be in writing, and I would ask you to be as specific as possible about what it is you wish to review or hear again.

Finally, you are instructed that you must not (1976) reveal the standing of the jurors at any time during your deliberations, that is, you are not to indicate the split of any vote on any count for any verdict, to anyone, including me. However, I instruct you that should you reach a unanimous verdict of guilty or not guilty on any count as to any defendant named herein, you may at any time inform the court that you have done so, and I will call you out and take the verdict or verdicts and then return you to your deliberations as to the remaining counts and defendants.

(1977)

Mr. Marshal, will you escort the jurors to the jury room for just a few moments. We will call you right back in shortly. Don't talk about the case yet; don't start your deliberations yet. Counsel please remain. (Jury excused.)

(1983) * * *

Mr. Abramowitz: I think that may be the best way. With respect to that portion of your Honor's charge wherein you said the defendants are not required to (1984) produce any evidence, I would appreciate it if this were amended to add: whether or not they testified and did produce some evidence, there is no requirement that they produce more evidence.

The Court: Denied (Jury in box).

(1985) * * *

The Court: Ladies and gentlemen, with respect to count 24, the obstruction of justice count, it has been called to my attention that my recollection is apparently faulty. I told you the following:

(1986)

"In order to find that George Stofsky or Al Gold committed the crime charged in count 24 the government must have demonstrated to you beyond a reasonable doubt each of the following elements as to the defendant under consideration:

First, that the defendant knew that a proceeding was pending in a court of the United States.

Second, that the defendant knew that Jack Glasser was expected to be called as a witness in the proceeding.

I further said that neither of these elements is in dispute. Each of the defendants who are charged in this count have taken the witness stand and said that Jack Glasser indicated prior to the acts in question here that he has been subpoenaed to appear before a federal grand jury sitting in the Southern District of New York.

Well, it is disputed by both the defendant Stofsky and Gold. That element is in dispute. It is, therefore, an issue which is in dispute and which you must consider based upon your recollection of the evidence and of all the relevant

testimony. You must decide whether or not the government has proved this element, as well as the other elements, beyond a reasonable doubt.

(1993) * * *

(At 4:30 the following took place in the absence of the jury.)

The Court: We have a note from the jury which reads:

"Glasser testimony re Hessel, Cohen and Schwartzbaum."

This will be marked Court's Exhibit 14. (Court's Exhibit 14 marked for identification.)

The Court: I understand, Mr. Abramowitz and Mr. Sabetta, that you have discussed the request and have agreed as to what testimony is to be read back?

Mr. Abramowitz: The pages and the line numbers.

The Court: Just give them to the court reporter and that will suffice. He will read the testimony.

Mr. Sabetta: I will say for the record that in the absence of any limitation in the jury's note as to exactly what they want, Mr. Abramowitz and I agree that it would be most fair if they were read direct, cross, any redirect and recross there might be. There is no limitation in their request.

(1994)

Mr. Abramowitz: We agree.

The Court: I have another note just received which I will have marked Court's Exhibit 15:

"We would like the judge's charge re count 23 on racketeering."

We will take that up later. (Court's Exhibit 15 marked for identification.) (Jury in box.)

The Court: Gentlemen, we have your note requesting some testimony of Mr. Glasser, which note has been marked Court's Exhibit 14. We are ready to proceed with the reading of that testimony. (Testimony read.)

(1995) * * *

The Court: I have your other note, and I am omitting that portion which pertains to count 23 and that which sets forth the pertinent part of the statute, and should you want that, you can have that by asking for it. I am moving on to the elements required and the explanation with respect to the elements. It is four pages:

(1996)

"In order to establish that George Stofsky or Al Gold committed the crime charged in count 23, the government must prove—with respect to the defendant you are considering—each of the following essential elements beyond a reasonable doubt:

One, that he committed any two of the offenses in violation of the Taft-Hartley Law with which he is charged. In other words, with respect to George Stofsky, that he committed, or aided and abetted in the commission of, at least two of the crimes charged in counts 2, 3, 4 and 5; and with respect to Al Gold, that he committed at least two of the crimes charged in counts 2 through 17.

- 2. That the crimes, if any, which you find he committed occurred within ten years of each other and that one of the crimes you find he committed took place after October 15, 1970.
- 3. That the crimes, if any, which you find he committed were connected with each other by some common

scheme, plan or motive so as to constitute a pattern and were not merely a series of disconnected acts.

- 4. The crimes, if any, which you find he committed were in the course of his employment by the Furriers Joint Council; and, finally
- 5. That Furriers Joint Council was engaged in, (1997) or that its activities affected, the interstate or foreign commerce of the United States.

Both George Stofsky and Al Gold have asserted that they did not commit any of the violations of the Taft-Hartley Law set forth in counts 2 through 17 of the indictment. If you find that to be so, then there is no way for the government to sustain its burden with respect to count 23.

In order to sustain its burden with respect to count 23, the government, at the threshold, must have proved beyond a reasonable doubt that the defendant you are considering committed at least two of the acts with which he is charged in counts 2 through 17. And even if you have found beyond a reasonable doubt that the defendant you are considering committed at least two of the crimes set forth against him in count 2 through 17, at least one of the crimes you have found must have occurred after October 15, 1970, or else the government has not met its burden. In this connection, I must remind you that the only acts included in count 2 through 17 alleged to have occurred after October 15, 1970, are set forth in counts 4 and 5—the counts involving alleged payments from Grossman in 1971.

Further, as required by element 3, even if you (1998) find as against a defendant named in count 23 the requisite two crimes committed within the requisite time period, you cannot convict him on this count unless you also find be-

yond a reasonable doubt that these crimes were connected with each other, that is, that they were in furtherance of the same goal, or served the same purpose, or were part of the same scheme, or had something else in common, and were not simply a series of disconnected acts.

Element 4 requires that the acts, if you find them to have been committed, must be proved to have been committed in the course of the defendant's employment by the Furriers Joint Council. If you find the requisite underlying criminal acts and if you believe that the purpose of those payments was as alleged by the government witnesses at this trial—i.e., to buy the privilege of circumventing the collective agreements, or to gain some other relief from union pressure—you may find that this element of the crime charged in count 23 has been satisfied.

Just as the government must prove an element of interstate commerce in counts 2 through 22, the government must prove a similar element with respect to count 23. Again, if you believe the evidence which has been presented that a substantial number of skins used by the union employees specified in counts 2 through 17, in the manufacture (1999) of fur garments, were brought into New York from other states or other countries, and that numerous fur industry manufacturers who employed union labor sold their finished garments outside New York State, you may find this element satisfied. Now, if you require anything further, send us a note.

We are going to work a bit late. But, first, at 6 o'clock we will send you for supper. If you have any telephone calls which you wish to have made to your homes, the marshal will make the telephone calls for you. Just give that message to the marshal.

Mr. Marshal, lead the jury out. (The jury retired to continue its deliberations at 5:50 P.M.)

(2000) * * *

(At 9:25 P.M. the jury took its place in the jury box.)

The Court: We have a note from the jury which will be marked Court's Exhibit 16, but we won't undertake to answer it at this time. We will answer it in the morning.

We have transportation for you to take you to your residences. My instruction to you is that you must discontinue your deliberations now. You may not discuss the case with anyone. You are still deliberating. And you may not discuss it with others; you may not discuss it amongst yourselves until you have returned to the jury room to resume your deliberations.

I am going to ask you to come in at 9:30 tomorrow morning. And, Mr. Foreman, the jury should not begin its deliberations, you shall not resume your deliberations until every juror is present. As soon as the jurors are present, which should be at 9:30, we will call you out and give you the answer that you seek in this note.

With that, Mr. Foreman, would you lead the jury (2001) out with the marshal to the vehicles downstairs. Goodnight.

(Jury excused.)

The Court: Court's Exhibit 16 reads:

"When was the strike to Schwartzbaum Furs? What part of 1969."

Counsel, between you perhaps you can get together on that, and in the morning we will resume at 9:30 and be prepared to furnish that information.

Mr. Abramowitz: It is May, 1969.

The Court: We will give them that answer in the morning. In fact, I think maybe the best way to do it is

to give the note to the marshal and pass it to the jury, if it is satisfactory, and then ask him to return it to our files out here.

Mr. Abramowitz: Yes.

The Court: Then they can resume without us having to assemble for that purpose.

(2002) * * *

The Court: The note will be marked Court's Exhibit 17, and it reads as follows:

"In count 1 of the indictment would it make a difference in the charge if line number 7 of page 2 and in line number 22 of page 2 the word 'or' replace the word 'and' in the phrase 'request, demand and accepted payments.'"

The statute says "or."

Do you want to take a minute to look into it? (2003) Here is the note. What is your response to the request of the jury?

Mr. Sabetta: Our response, as a matter of law, the jury need find only that they conspired to do any one of those things, not all of them.

The Court: So the word should be "or."

Mr. Sabetta: Yes.

The Court: And you, Mr. Abramowitz?

Mr. Abramowitz: May I confer with counsel?

The Court: Yes.

Mr. Abramowitz: I have to agree with Mr. Sabetta that the jury should be instructed that they could find any one of those, assuming all the other elements.

The Court: I will try to limit myself to the specific question, and I think the answer is the statute says "or" and should be read as "or."

Mr. Abramowitz: Can be read as or.

The Court: The statute says "or."

Mr. Abramowitz: The indictment charges they did all three, and it is sufficient if they find one, rather than amending the indictment. I don't think you can amend the indictment.

The Court: Bring the jury in.

Let the record show that they commenced their (2004) deliberations about 9:38 A.M., and let the record show that we sent in the note that was marked Court's Exhibit 16 with the answer agreed upon by counsel, that is, May, 1969.

Mr. Abramowitz: Can we be sure we get that back when the jury finishes?

The Court: Did you get 16 back?

The Clerk: It is still in the jury room.

The Court: Get that back, please.

(The jury took its place in the jury box at 11:40 P.M.)

The Court: Good morning. We have your note, which has been marked Court's Exhibit 17. The question posed is:

"In count number 1 of the indictment would it make a difference in the charge if in line number 7, page 2 and line number 22, of page 2 the word 'or' replaced the word 'and' in the phrase 'request, demand and accepted payments.'"

I have turned to the statute with reference to the portion you have inquired about, and the statute uses the word "or." So that it is possible that you may find that each of those acts occurred, which would mean the use of the word "and" would remain in the indictment, and it is possible that you could that any of them occurred, (2005) which would mean that the statute, which says "or" was applied.

If you have any further question about it, send out a note.

Have I answered your question?

The Foreman: Yes.

(The jury retired to the jury room to continue its deliberations.)

(2006) * * *

The Court: We have a partial verdict from the jury. Bring in the jury. The note will be marked Court's Exhibit 18.

(Court's Exhibit 18 marked for identification.)

(The jury took its place in the jury box.)

(The clerk called the roll of the jurors.)

The Clerk: Mr. Foreman, has the jury agreed upon a verdict?

The Foreman: Not on all questions.

The Clerk: What is the verdict as to the defendant Stofsky on the following counts:

Count 1.

The Foreman: On count 1 it is guilty.

The Clerk: What is your verdict as to the defendant Stofsky on count 2?

The Foreman: Guilty.

The Clerk: On count 3?

The Foreman: Guilty.

The Clerk: On count 4?

The Foreman: Guilty.

The Clerk: On count 5?

(2007)

The Foreman: Guilty.

The Clerk: On count 23?

The Foreman: Guilty.

The Clerk: On count 24?

The Foreman: Guilty.

The Clerk: On count 25?

The Foreman: Guilty.

The Clerk: On count 26?

The Foreman: Guilty.

The Clerk: What is your verdict as to the defendant Hoff on the following counts:

On count 1?

The Foreman: Guilty.

The Clerk: What is your verdict as to the defendant Gold on the following counts:

On count 1.

The Foreman: Guilty.

The Clerk: On count 2?

The Foreman: Guilty.

The Clerk: On count 3?

The Foreman: Guilty.

The Clerk: On count 4?

The Foreman: Guilty.

The Clerk: On count 5?

(2008)

The Foreman: Guilty.

The Clerk: On count 14?

The Foreman: Guilty.

The Clerk: On count 15?

The Foreman: Guilty.

The Clerk: On count 16?

The Foreman: Guilty.

The Clerk: On count 17?

The Foreman: Guilty.

The Clerk: On count 23?

The Foreman: Guilty.

The Clerk: On count 24?

The Foreman: Guilty.

The Clerk: On count 32?

The Foreman: Guilty.

The Clerk: On count 33?

The Foreman: Guilty.

The Clerk: What is your verdict as to the defendant Lageoles on count 1?

The Foreman: Guilty.

The Clerk: Ladies and gentlemen of the jury, listen to your verdict as it now stands recorded: you say you find the defendant Stofsky guilty on counts 1, 2, 3, 4, 5, 23, 24, 25 and 26.

(2009)

You say you find the defendant Hoff guilty on count 1.

You say you find the defendant Gold guilty on counts 1, 2, 3, 4, 5, 14, 15, 16, 17, 23, 24, 32 and 33.

And you say you find the defendant Lageoles guilty on count 1.

And so say you all?

The Foreman: Yes.

Mr. Abramowitz: May I have the jury polled?

The Court: Poll the jury.

(Jury polled.)

The Court: Counsel, come up to the side bar, please.

(At the side bar.)

The Court: Mr. Sabetta, have you had a chance to analyze what has happened?

Mr. Sabetta: I am not sure I understand your Honor's question.

The Court: In other words, the jury is deadlocked on counts 6, 7, 9, 11, 12, 18, 19, 20 and 29.

Now, do you want to take a moment to ponder the implications of that? I wish to ask you your wish at this time?

Mr. Sabetta: First of all, is it clear that (2010) they are deadlocked?

The Court: They have said so, yes.

Mr. Sabetta: I had not seen the note.

The Court: Why don't you take a moment, if you wish, with Mr. Fryman to ponder that and to see what your request is at this point, if anything.

Mr. Sabetta: May I see the note?

The Court: Yes. Is there a request of any kind on the government's part with reference to further deliberations as to the counts upon which they are deadlocked? Or is it the government's wish that there be no further deliberations with respect to these remaining counts in view of their announced verdicts?

Mr. Sabetta: I would like to give that some thought, your Honor.

The Court: Take a few moments.

(Pause.)

(In open court.)

Mr. Sabetta: I am prepared to speak to the issue.

(At the side bar.)

The Court: I am, of course, interested in hearing from Mr. Abramowitz as well on the question.

Mr. Sabetta: We would like the jury to continue (2011) deliberating as to the open counts on which they now say they are deadlocked.

Mr. Abramowitz: I don't think I can take any position with respect to that, unless they say they are hopelessly deadlocked.

The Court: They say they are deadlocked.

Mr. Abramowitz: I misunderstood. Then I move for a mistrial on those counts on which they say they are deadlocked.

The Court: The application is denied. I am going to give them a modified Allen charge at this time.

Mr. Abramowitz: I object to that.

The Court: On the open counts?

Mr. Abramowitz: Yes.

(In open court.)

The Court: Now, Mr. Foreman, ladies and gentlemen of the jury: I am going to suggest with respect to those counts where you are deadlocked, that is, counts 6, 7, 9, 10, 11, 12, 18, 19, 20 and 27, that you continue your deliberations.

This case, as I told you earlier, is very important to both the defendants and to the government. It is desirable that if a verdict can be reached with respect to these counts where you have indicated you are deadlocked, (2012) that this be done both from the viewpoint of the government and of the defendants.

Of course, I instruct you that your final verdict with respect to these counts must reflect your conscientious decision as to how the issues should be decided. You are not to yield your conviction simply because you are outnumbered or outweighed.

However, it is normal for jurors to have differences. Frequently after extended discussion, jurors may find that a point of view which originally represented a fair and considered judgment might well yield upon the basis of argument further discussion and further review of the facts and evidence.

Let me read briefly to you a paragraph from a Supreme Court case discussing this issue:

"Although the verdict must be the verdict of each individual juror, they should listen with a disposition to be convinced of each other's argument, that if the much larger number were for conviction, a dissenting juror should consider whether his doubt is a reasonable one which made no impression upon the minds of some men equally honest, equally intelligent as himself.

If, upon the other hand, the majority were for acquittal, the minority ought to ask themselves whether (2013) they might not reasonably doubt the correctness of the judgment which was not concurred in by the majority."

I tell you this with no intention or desire to coerce any change of view by any one of you. In the final analysis, you must vote according to your own conscientious judgment. I am fully prepared to accept the ultimate decision, whatever that may be.

With all that in mind, Mr. Foreman, will you please lead the jury back to the jury room.

(The jury again retired at 1:30 P.M. to have lunch and to continue its deliberations.)

Mr. Abramowitz: Your Honor, might I note again my exception to the last instructions given to the jury.

The Court: Yes.

(2025)

Let the record reflect that a note that the jury sent in will be marked Court's Exhibit 19.

(Court's Exhibit 19 was marked for identification.)

(The jury took its place in the jury box.)

(The clerk called the roll of the jury.)

The Clerk: Mr. Foreman, has the jury agreed upon a verdict as to the remaining counts?

The Foreman: Yes.

The Clerk: What is your verdict as to the defendant Hoff on the following counts:

Count 6?

The Foreman: Guilty.

The Clerk: Count 7?

The Foreman: Guilty.

The Clerk: Count 9?

The Foreman: Guilty.

The Clerk: Count 10?

The Foreman: Guilty.

The Clerk: Count 11?

The Foreman: Guilty.

The Clerk: Count 12?

The Foreman: Guilty.

(2026)

The Clerk: Count 18?

The Foreman: Guilty.

The Clerk: Count 19?

The Foreman: Guilty.

The Clerk: Count 20?

The Foreman: Guilty.

The Clerk: Count 27?

The Foreman: Guilty.

The Clerk: What is your verdict as to the defendant Gold on the following counts:

Count 6?

The Foreman: Guilty.

The Clerk: Count 7?

The Foreman: Guilty.

The Clerk: Count 9?

The Foreman: Guilty.

The Clerk: Count 10?

The Foreman: Guilty.

The Clerk: Count 11?

The Foreman: Guilty.

The Clerk: Count 12?

The Foreman: Guilty.

The Clerk: What is your verdict as to the defendant Lageoles on the following counts:

Count 6?

The Foreman: Guilty.

The Clerk: Count 7?

The Foreman: Guilty.

The Clerk: Count 9?

The Foreman: Guilty.

The Clerk: Count 10?

The Foreman: Guilty.

The Clerk: Count 11?

The Foreman: Guilty.

The Clerk: Count 12?

The Foreman: Guilty.

The Clerk: Ladies and gentlemen, listen to your verdict as it now stands recorded:

You say you find the defendant Hoff guilty on Counts 6, 7, 9, 10, 11, 12, 18, 19, 20, and 27;

You say you find the defendant Gold guilty on Counts 7, 9, 10, 11, and 12;

And you say you find the defendant Lageoles guilty on Counts 6, 7, 9, 10, 11, and 12, and so say you all?

The Foreman: Yes.

Mr. Abramowitz: May we have the jury polled?

The Court: Poll the jury.

(2028)

(The clerk polled the jury.)

The Court: Now, Mr. Foreman, ladies and gentlemen of the jury, you have reported to us your verdict as to each defendant and as to each count of the indictment in this case. You have found each defendant guilty of the conspiracy charged in Count 1, and there is one more matter for you to deal with with respect to that before we may dismiss you with our thanks for your service.

You recall when I charged you I told you that the Government alleged that the conspiracy charged in Count 1 was to violate two Federal statutes.

Objective one was to violate the Taft-Hartley law, and objective two was to violate the Crime Control Act.

You will further recall that the only difference between the two is that the Crime Control Act, objective two, included some elements in addition to the Taft-Hartley objective.

Since you have found a conspiracy, and that each of the defendants was a member of it, you have clearly found that each defendant conspired to violate objective one, the Taft-Hartley-objective.

Now I am going to send you back to the jury room just long enough for you to be able to answer the following (2029) question as to each defendant:

In finding him guilty, that is, each defendant, of the conspiracy count, did you find him to have conspired to violate the second objective, that is, the Crime Control Act objective?

In accordance with my instructions to you regarding that objective, you may just send out a note when you are ready to answer that question "Yes" or "No" with respect to each defendant.

Would you take the jury out, sir?

(The jury retired to continue its deliberations at 3.47 p.m.)

Mr. Abramowitz: I want to note my objection for the record, asking them to find an answer to that question.

The Court: I suggest you stay close, all counsel stay on the floor.

Mr. Sabetta: Yes, your Honor.

(The following took place at 4 p.m.)

The Court: We have a note from the jury, which will be marked Court's Exhibit 20:

"Please clarify the Crime Control Act for us."

(Court's Exhibit 20 was marked for (2030) identification.)

The Court: I interpret that as a request for instruction with respect to those requirements which go beyond the requirements to find agreement to violate the Taft-Hartley law, the first objective. I have a portion of my charge which speaks to this, which I intend to read to them.

Bring in the jury.

(Jury in box.)

The Court: Mr. Foreman, ladies and gentlemen of the jury, I have already instructed you that although the agreement to violate the Taft-Hartley law, the first objective, may be found in an agreement to request, demai 1 or accept a payment of money from a fur manufacturer employing union labor, the agreement to violate the Crime Control Act, the second objective, requires a further finding that the agreement contemplated that at least two payments of money would be requested, demanded or accepted, and that at least one of those payments would occur after October 15, 1970, and that the two payments would be within ten years of each other, and, finally, that those payments would be connected with each other by some common scheme.

If you require anything further, send out a (2031) note and indicate what you wish.

(Jury retired to continue its deliberations.)

Mr. Abramowitz: Your Honor, I take exception to that extra instruction.

The Court: Yes.

(The jury took its place in the jury box at 4:10 p.m.)

The Court: We have a note, which will be marked Court's Exhibit 21.

(Court's Exhibit 21 was marked for identification.)

The Clerk: Ladies and gentlemen of the jury, please answer to your name as it is called.

(Roll of the jury called by the clerk.)

The Clerk: Mr. Foreman, ladies and gentlemen of the jury, do you have an answer with respect to each of the defendants?

The Foreman: Yes.

The Clerk: With respect to the defendant Stofsky, what is your answer?

The Foreman: Guilty.

The Court: Hand him the note.

The Foreman: As to Stofsky, yes.

The Clerk: With respect to the defendant Hoff, (2032) what is your answer?

The Foreman: No.

The Clerk: With respect to the defendant Gold, what is your answer?

The Foreman: Yes.

The Clerk: With respect to the defendant Lageoles, what is your answer?

The Foreman: No.

The Court: Get the note back. Poll the jury, Mr. Clerk.

(Jury polled.)

The Court: Mr. Foreman, ladies and gentlemen of the jury, I would like to say once again that we know that you have had to make a lot of sacrifices to participate here as jurors. We appreciate your punctuality and your patience, your commitment to your work. We thank you. You are discharged as a jury.

(Jury discharged.)

The Court: Mr. Abramowitz?

Mr. Abramowitz: Your Honor, may we reserve motions till the day of sentence, please?

The Court: Yes, you may.

Mr. Abramowitz: May the defendants be continued on their personal recognizance bonds which they signed at (2033) the time of the indictment?

The Court: Any objection?

Mr. Sabetta: No objection from the Government.

The Court: So ordered. Sentence is set for April 17 at 4 p.m. Please call my chambers, Counsel, or check the Law Journal for the courtroom. I will be in Part 1, but I may be in another courtroom as well.

I would like to express my thanks to counsel for their very professional handling of their respective obligations in this case. It has been a pleasure to work with you.

The Court requests a pre-sentence report with respect to each defendant.

(Whereupon, an adjournment was taken to April 17, 1974, at 4:00 o'clock p.m.)

Notice of Motion

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
73 Cr. 614 (LWP)

UNITED STATES OF AMERICA

-against-

GEORGE STOFSKY, CHARLES HOFF, AL GOLD and CLIFFORD LAGEOLES,

Defendants.

SIR:

PLEASE TAKE NOTICE, that upon the annexed affidavit of Elkan Abramowitz, sworn to the 22nd day of April, 1974 and the exhibits annexed thereto, the trial before a jury and all other proceedings heretofore had herein, the undersigned will move this Court on the 29th day of April, 1974 at 4:60 o'clock in the afternoon of that day, in Room 2804, in the Courthouse, Foley Square, New York, New York, for a new trial on the ground of newly discovered evidence pursuant to Rule 33 of the Federal Rules of Criminal Procedure, together with such other and further relief as to the Court may seem just and proper.

Yours, etc.,

WEISS ROSENTHAL HELLER & SCHWARTZMAN
By: ELKAN ABRAMOWITZ
A Member of the Firm

-and-

ROONEY & EVANS
By: PAUL R. ROONEY
A Member of the Firm

Dated: New York, New York April 22, 1974

To: Honorable Paul J. Curran United States Attorney United States Courthouse Foley Square New York, New York 10007.

Affidavit of Elkan Abramowitz, in Support of Motion

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

73 Cr. 614 (LWP)

UNITED STATES OF AMERICA

-against-

GEORGE STOFSKY, CHARLES HOFF, AL GOLD and CLIFFORD LAGEOLES,

Defendants.

State of New York, County of New York, ss.:

ELKAN ABRAMOWITZ, being duly sworn, deposes and says:

1. I am a member of the firm of Weiss Rosenthal Heller & Schwartzman, co-counsel for the defendants herein and I make this affidavit in support of defendants' motion pursuant to Fed. R. Crim. P. 33 for a new trial on the ground of newly discovered evidence.

- 2. Briefly stated, the grounds for defendants' motion are as follows: subsequent to the conclusion of the trial herein, defendants discovered documentary evidence that Jack Glasser, the government's primary witness, whose testimony was essential to conviction on a major'ty of the counts in the indictment herein, committed perjury at the trial with respect to his testimony as to what he did with moneys he testified were given to him by various actually received from those manufacturers during the years he was a labor adjuster for the Associated Fur Manufacturers of New York, Inc.
- 3. Glasser testified at trial that he had, in savings accounts, in 1972, approximately \$120,000 (T411). He further testified that those funds came, in "most part", from the estates of his father-in-law and mother-in-law (T415; 970), and his wife testified similarly, stating that she inherited almost \$100,000 from her parents in "stocks, bonds and money" (T469). He also testified that all of the money he received from manufacturers, which payments were received in 1967, 1968 and 1969, amounted to about \$15,000 or \$16,000 in total (T422), and that the portion of these monies he said he retained were put in his pocket and spent, not banked (T423).
- 4. An analysis of Glasser's testimony shows that the sum of all monies he testified he had received from manufacturers was \$14,000. A breakdown of the same, by manufacturer, is annexed hereto as Exhibit "A", and a breakdown by date is annexed hereto as Exhibit "B". Both Exhibit "A" and "B" additionally show the amount Glasser testified he retained for himself out of the total, which sums amount to \$5,043.
- 5. On January 31, 1974, a subpoena duces tecum was served upon Mr. Glasser, requesting, inter alia, the produc-

tion of all bank records and federal income tax returns for the period 1967 through 1972. A copy of the subpoena is annexed hereto as Exhibit "C". On February 11, 1974, Mr. Glasser produced only his return for 1972—no other documents were produced in response to the subpoena. On February 13, 1974, defendants made application for the government to produce the balance of Mr. Glasser's income tax returns (T69), which the Court ordered on February 15, 1974. A photocopy of a conformed copy of that order is annexed hereto as Exhibit "D". The returns for the years 1967 through 1971 were produced on February 20, 1974, immediately prior to the luncheon recess on that day (T956); Glasser was recalled immediately after the luncheon recess and the government rested its case that afternoon.

- 6. Glasser's 1972 tax return showed interest income from three savings banks—East New York Savings Bank, Williamsburgh Savings Bank and First Pederal Savings and Loan Association of New York. Accordingly, on February 13, 1974, the first business day following defendants' receipt of the aforesaid return, subpoenas duces tecum were served on those three banks. A copy of that subpoena is annexed hereto as Exhibit "E".
- 7. The banks were unable to respond to the subpoenas until on or about February 20, 1974. The records produced by Williamsburgh and First Federal disclosed accounts that were not opened until 1971 and 1972 and in which there was little activity and no cash deposits. The records produced by East New York showed two accounts with considerable activity in the 1967 through 1970 period, including a number of large deposits, but the bank was not able to provide defendants with photocopies of deposit slips for those accounts until on or about March 7, 1974—a week after the trial had concluded.

- 8. The deposit slips provided by the East New York Savings Bank revealed, for the first time, that many of Glasser's large deposits in this period were significant cash deposits. Photocopies of the deposit slips and transcripts of these accounts, as provided by the bank, are annexed hereto collectively as Exhibit "F".
- 9. Once the defendants were in possession of proof positive that Glasser was making significant cash deposits during this period—and not at some earlier time—subpoenas were issued for the records of the Greenwich Savings Bank and of the Emigrant Savings Bank, whose identities were revealed for the first time in the pre-1972 returns which were produced on February 20, 1974. Photocopies of the deposit slips and transcript of the Greenwich account are annexed hereto collectively as Exhibit "G" and photocopies of the deposit slips and transcript of the Emigrant account are annexed hereto collectively as Exhibit "H".
- 10. As can be seen by an examination of Exhibits "F", "G" and "H", there were considerable cash deposits made in these three banks during the years 1967 through 1970—Exhibit "I", annexed hereto, presents in summary form both Glasser's testimony as to receipts and the information discovered in the savings banks' documents. As is shown therein, Glasser deposited, in cash, during 1967-1970, a total of \$56,701.05—almost half of his life's savings, and, significantly, far more than the total amount of money he said he received from manufacturers and retained for himself.
- 11. Glasser testified that, as of the time of his discharge by the Associated Fur Manufacturers, Inc., his gross salary was \$225 per week (T405), or \$11,700 per year. It is therefore clear that the source of these large amounts of cash had to have been something in addition to that portion of his paycheck which Glasser testified he saved religiously

(T421-22). We submit that the source of these cash deposits can be explained only by concluding that Glasser perjured himself when he testified that he gave any of the monies to one or more of the defendants and when he said that the whole "shooting match" was only \$15,000 or \$16,000. Rather, there were much larger payments and/or payments from many additional sources and no portion of any payments went to anyone other than Glasser himself. There is no other way to explain these huge cash deposits, especially because the bank records reveal no cash deposits after August, 1970-the month in which the Association uncovered the fact that manufacturers were paying Glasser -despite the fact he remained in New York for almost three years thereafter and because his testimony indicated that he had no other source for cash income in these amounts during those years.

Under the cases cited in the accompanying memorandum of law, a new trial must be granted on the discovery of perjured testimony when (1) it is discovered after the trial; (2) it is material, not cumulative or merely impeaching; and (3) without the perjury, the jury might not have convicted. It is clear that this evidence is neither cumulative nor merely impeaching. While the question of the source of Glasser's fortune had been raised during the trial, and the story of the inheritance had been discredited, at least in part, by the introduction in evidence of the Fenster estate papers (Defendants' Exhibits AM and AN), the defendants were unable to present any positive proof that the money had not been received in the 1940s. Indeed, the government suggested in its summation that the fortune could have come from gifts, trusts, or payments "under the table" from Glasser's in-laws rather than from their probated estates (T1892). The evidence presented in Exhibits "F", "G" and "H" herein contains positive proof that a large portion of the fortune amassed during the

years when Glasser admittedly was receiving payments from manufacturers. This evidence is not merely impeaching, as it goes to the heart of Glasser's testimony about sources, amounts and distribution of sums received from manufacturers.

- 13. This evidence affects the substance of Glasser's testimony since the jury might have believed that Glasser kept all of the money himself rather than given it to the defendants as he testified. Showing Glasser's perjury might have resulted in a jury verdict of acquittal on most of the direct payment counts, the conspiracy count, the obstruction of justice count and some of the tax evasion counts.
- 14. In summary, defendants have demonstrated herein that the evidence of Glasser's cash deposits of almost \$57,000 was not discovered until after the trial, that the failure to discover it sooner was not due to a lack of diligence, that the evidence is material, that it is neither cumulative nor impeaching and that without the perjury the jury might not have convicted.

WHEREFORE, it is respectfully submitted that defendants' motion should be granted in all respects and that the Court should order a new trial herein on the ground of newly discovered evidence.

ELKAN ABRAMOWITZ

Sworn to before me this 22nd day of April, 1974 MICHAEL R. SONBERG Notary Public

705a

Exhibit "A", Annexed to Foregoing Affidavit

TABLE OF GLASSER RECEIPTS, BY MANUFACTURER

Manufacturer	Year	Quarter	Receipts from Manufacturers per Glasser Testimony	Glasser Retained Portion of Receipts from Manufacturers per Glasser Testimony	Transcript Reference
SHERMAN BROS.	1967	3rd	\$ 500	\$ 167	117
(Sam Sherman)		4th	500	167	118
	1968	3rd	500	167	122
		4th	500	167	122
	1969	3rd	500	125	124
		4th	500	125	128
CHATEAU CREATIONS	1967	3rd	500	125	148
(Harry Hessel)		4th	1,000	250	148
	1968	2nd	600	125	149
		3rd	500	125	149
		4th	1,000	250	149
	1969	2nd	500	125	150-51
		3rd	500	125	150-51
		4th	1,000	250	150-51
BRESLIN BAKER	1968	3rd	500	250	161
(Sam Baker)		4th	500	250	161
	1969	3rd	500	250	161-62
		4th	500	250	161-62
K. J. SCHWARTZBAUM	1968	3rd	600	300	187-88
(Karl "Jack"		4th	300	150	187-88
Schwartzbaum)	1969	3rd	600	300	188-89
		4th	300	150	188-89
CORINNA FURS	1968		250	125	195-96
(Sol Cohen)		4th	150	75	195-96
	1969		150	75	196
		4th	150	75	196
DANIEL FURS (Daniel Ginsberg)	1969	2nd	1,000	500	205

Exhibit "B", Annexed to Foregoing Affidavit

TABLE OF GLASSER RECEIPTS, BY DATE

Year Quarter		Manufacturer	Receipts from Manufacturers per Glasser Testimony		Glasser Retained Portion of Receipts from Manufacturers per Glasser Testimony	
1967	3rd	SHERMAN	\$ 500		\$ 167	
200.		CHATEAU	500	\$ 1,000	125	\$ 292
	4th	SHERMAN	500		167	
		CHATEAU	1,000	1,500	250	417
1968	2nd	CHATEAU	500	500	125	125
8rd	SHERMAN	500		167		
	CHATEAU	500		125		
	BAKER	500		250		
	SCHWARTZBAUM	600		300		
		CORINNA	250	2,350	125	967
	4th	SHERMAN	500		167	
		CHATEAU	1,000		250	
		BAKER	500		250	
		SCHWARTZBAUM	300		150	
		CORINNA	150	2,450	75	892
1969	2nd	CHATEAU	500		125	
		DANIEL	1,000	1,500	500	625
3rd	SHERMAN	500		125		
		CHATEAU	500		125	
		BAKER	500		250	
		SCHWARTZBAUM	600	0.050	300	
		CORINNA		2,250	75	875
	4th	SHERMAN	500		125	
	CHATEAU	1,000		250		
	BAKER	500		250		
		SCHWARTZBAUM	300		150	
		CORINNA	150	2,450	75	850
				\$14,000		\$5,043

Exhibit "C", Annexed to Foregoing Affidavit

(Subpoena to Produce Document or Object)

UNITED STATES DISTRICT COURT

FOR THE

SOUTHERN DISTRICT OF NEW YORK

No. 73 Cr. 614

UNITED STATES OF AMERICA

V.

GEORGE STOFSKY, ET AL.,

To: Jack Glasser, 19390 Collins Avenue, Miami Beach, Florida 33162, Apt. 1408.

You are hereby commanded to appear in the United States District Court for the Southern District of New York at the Courthouse, Room 618, Foley Square, the city of New York on 11th day of February, 1974 at 9:30 o'clock A.M. to testify in the case of United States v. George Stofsky, et al., and bring with you:

Rider to Subpoena Duces Tecum To Jack Glasser, Dated January 30, 1974

 Names and addresses of all banks with whom Jack Glasser had an account or transacted any business for the period 1967 through 1972, and all records of accounts and business in said banks, including, but not limited to, bank statements, cancelled checks, checkbooks, deposit slips, passbooks and safe deposit boxes.

Exhibit "C", Annexed to Foregoing Affidavit

- Retained copies of all New York State and Federal Tax Returns of Jack Glasser for the period 1967 through 1972.
- Retained copies of records as to any and all investigations conducted by the Internal Revenue Service in respect of said tax returns, including, but not limited to, handwritten notes, memoranda, correspondence and transcripts of proceedings.
- 4. All records, memoranda, correspondence, notes and other documents pertaining to communications between Jack Glasser and any representative of the United States Government as to the criminal prosecution instituted against George Stofsky, Charles Hoff, Al Gold and Clifford Lageoles.
- 5. All records, memoranda, correspondence, notes and other documents pertaining to any and all relationships between Jack Glasser and Furriers Joint Council, George Stofsky, Charles Hoff, Al Gold, Clifford Lageoles, Daniel Grossman, Sam Sherman, Harry Hessel, Sol Cohen, Daniel Ginsberg, Walter Stiel, Harry Jaffe, Karl "Jack" Schwartzbaum, Sol Silberzweig, Sam Baker, Henry Ketcher, Harry Koch, and/or David Koster.
- 6. All records, memoranda, correspondence, notes and other documents pertaining to any and all relationships between Jack Glasser and Richton International Corp., Sherman Bros. Furs, Inc., Chateau Creations, Inc., Corinna Furs, Inc., Daniel Furs, Inc., Fourrures Sport Walt Stiel Limited, Schwartzbaum Furs, Inc., and/or Royal Mink.
- All records, memoranda, correspondence, notes and other documents pertaining to any and all relationships between Jack Glasser and the Health and Retirement Fund of the Fur Industry.

Exhibit "C", Annexed to Foregoing Affidavit

8. All records, memoranda, correspondence, notes and other documents pertaining to any and all relationships between Jack Glasser and the Associated Fur Manufacturers, Inc. for the period 1969 through 1972 including, but not limited to, any and all records pertinent to any official action taken by the Associated Fur Manufacturers, Inc. against Jack Glasser.

This subpoena is issued upon application of the defendants.

RAYMOND F. BURGHARDT,
Clerk.
By: B. EDWARDS
Deputy Clerk.

January 30, 1974

Weiss, Rosenthal, Heiler & Schwartzman Attorney for Defendants 295 Madison Avenue New York, N.Y. 10017.

Exhibit "D", Annexed to Foregoing Affidavit

ORDER

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK
73 Cr. 614

UNITED STATES OF AMERICA

-against-

GEORGE STOFSKY, CHARLES HOFF, AL GOLD and CLIFFORD LAGEOLES,

Defendants.

Upon all the prior proceedings had herein, it is

ORDERED, that the United States of America produce the income tax returns of Jack and Betty Glasser, for the years 1967 through and including 1971.

Dated: New York, N.Y. February 15, 1974

/s/ LAWRENCE W. PIERCE U.S.D.J.

Exhibit "E", Annexed to Foregoing Affidavit

(Subpoena to Produce Document or Object)

UNITED STATES DISTRICT COURT

FOR THE

SOUTHERN DISTRICT OF NEW YORK

No. 73 Cr. 614

UNITED STATES OF AMERICA

V.

GEORGE STOFSKY, ET AL.

To: Williamsburgh Savings Bank, East New York Savings Bank, First Federal Savings and Loan Association of New York.

You are hereby commanded to appear in the United States District Court for the Southern District of New York at the Courthouse, Foley Square, Room 618 in the city of New York on the 14th day of February, 1974 at 9:30 o'clock A.M. to testify in the case of United States v. George Stofsky, et. al., and bring with you records pertaining to accounts of Jack Glasser and Betty Glasser for the period 1967 through 1972, including, but not limited to, copies of account cards, monthly statements, application forms, loan transactions, credit inquiries and safe deposit boxes.

This subpoena is issued upon application of the defendants.

RAYMOND F. BURGHARDT, Clerk.

By: B. Edwards Deputy Clerk.

February 13, 1974

Weiss, Rosenthal, Heller & Schwartzman Attorney for Defendants 295 Madison Avenue New York, N.Y. 10017.

712a

Exhibit "F", Annexed to Foregoing Affidavit

The East New York Savings Bank

March 6, 1974

Weiss, Rosenthal, Heller & Schwartzman 295 Madison Avenue New York, New York 10017

Att: Mrs. Clarkson

Gentiemen:

This matter pertains to the action described in this subpoena. These are Xerox copies of the accounts, drafts, deposits, time deposits, checks and collection drafts from other banks. The complete story unfolds in order from page 1 through 9 consecutively.

Sincerely yours,

Peter Russack Assistant Vice President

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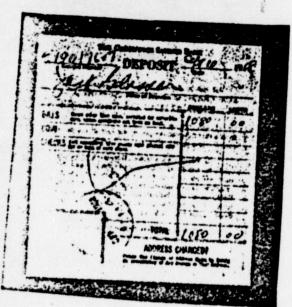
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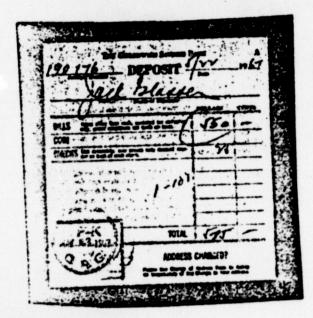
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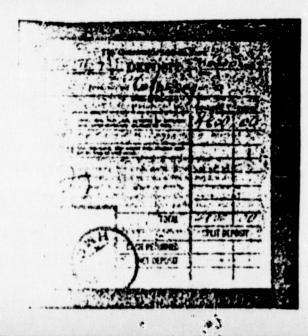
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The following is a transcript from the records of the Emigrant Savings Bank for:

ACCOUNT NO. 68 971 OFFICE 03

TITLE OF ACCOUNT lack Glasses or Betty Glasses

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59B	10/2/69					43	35			43	350	14	
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56B	10/17/19					82	57			43	163	44	
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The undersigned hereby certifies that the foregoing information is a true and correct transcript of the activity of the stated account as taken from the machine records maintained in the regular course of business of Emigrant Savings Bank.

AUTHORIZED SIGNATURE

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Exhibit "I", Annexed to Foregoing Affidavit

TABLE OF GLASSER RECEIPTS AND DEPOSITS

Year	Quarter	Receipts * from Manufacturers per Glasser Testimony	Cash Deposits Made in Glasser Savings Accounts	Glasser Retained Portion of Receipts from Manufacturers per Glasser Testimony
1967	1st		\$ 1,000.00	
	2nd		6,550.00	
	3rd	\$ 1,000.00		\$ 292.00
	4th	1,500.00	3,601.05	417.00
1968	1st		1,800.00	
	2nd	500.00	4,250.00	125.00
	3rd	2,350.00	4,900.00	967.00
	4th	2,450.00	3,000.00	892.00
1969	1st		3,000.00	
	2nd	1,500.00		625.00
	3rd	2,250.00	5,300.00	875.00
	4th	2,450.00	14,200.00	850.00
1970	1st		350.00	
10.0	2nd		3,100.00	
	3rd		5,650.00	
		\$14,000.00	\$56,701.05	\$5,043.00

^{*} Record cites contained in Exhibit A.

Affidavit of John C. Sabetta, in Opposition to Motion

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
73 Cr. 614 (LWP)

UNITED STATES OF AMERICA

GEORGE STOFSKY, CHARLES HOFF, AL GOLD and CLIFFORD LAGEOLES,

Defendants.

State of New York, County of New York, Southern District of New York, ss.:

JOHN C. SABETTA, being duly sworn, deposes and says:

- 1. I am an Assistant United States Attorney in the office of Paul J. Curran, United States Attorney for the Southern District of New York. I served as the government's trial counsel herein, and I make this Affidavit in opposition to defendants' motion for a new trial.
- 2. On May 3, 6, 13 and 14, 1974, I interviewed Jack Glasser and Betty Glasser with regard to defendants' charges contained in their new trial motion that Mr. Glasser committed perjury when he testified at the trial herein that he paid to defendants portions of moneys which he had received from various union fur manufacturers. Mr. Glasser affirmed that his prior testimony about such payments to defendants was entirely truthful.

- 3. At these meetings, I also discussed with Mr. and Mrs. Glasser the source of the deposits in their bank accounts during the year 1967-70, and their prior testimony at the trial herein. Mr. and Mrs. Glasser informed representatives of the government for the first time during these meetings that they received funds from the following sources during those years:
- (a) Illegal Payments from Other Manufacturers. Mr. Glasser told us that, in addition to the union fur manufacturers which he identified at the trial, numerous other union fur manufacturers paid him moneys and that in each such instance he passed a substantial portion of the same to one or more union officials—almost invariably one or more of the defendants herein—for the purpose of obtaining the union's acquiescence to violations of the contracting and overtime provisions of the collective labor agreement.
- (b) Sale of Jewelry. Mr. and Mrs. Glasser sold several pieces of jewelry, which she had inherited from her parents, in 1968 and 1970. The proceeds were approximately \$10,500.
- (c) Christmas Gifts. Mr. Glasser received \$2,000 to \$3,500 a year in cash as Christmas gifts from fur manufacturers during the years 1967-69. Most of the gifts were \$50 or \$100.
- (d) Wholesale Commissions. Mr. Glasser would take retail customers to fur manufacturers and receive a ten percent commission from the manufacturer on any subsequent sales. These commissions averaged \$3,000 to \$5,000 a year.
- (e) Vacation Gifts. Mr. Glasser received \$600 to \$700 a year from fur manufacturers as vacation presents.

- (f) Overtime Expenses. Mr. Glasser received approximately \$500 a year in expense money from the Associated Fur Manufacturers, Inc., for serving on overtime committees. He received \$7.50 for expenses each time he served on a committee.
- (g) Miscellaneous Commissions. Mr. Glasser also received commissions for the sale of lofts and for introducing to one another persons who became partners in fur manufacturing companies. He estimated that he received a total of approximately \$2,000 in such commissions during the years 1967-70.
- 4. I am submitting an Additional Affidavit to the Court setting forth further details of these interviews with Mr. and Mrs. Glasser. The government requests that this Additional Affidavit, which has not been served on counsel for defendants, be sealed and made a part of the record in this proceeding. Publication of the information contained in the Additional Affidavit might compromise further federal investigations of the fur manufacturing industry and prematurely identify numerous other individuals who have allegedly violated federal criminal laws.
- 5. Attached hereto as Exhibit 1 is a table showing for the years 1967-69 the amount of funds from the various sources for Mr. and Mrs. Glasser as shown in their income tax returns, their testimony at the trial herein and the information provided during the interviews described above; the known expenses for Mr. and Mrs. Glasser indicated on their income tax returns; and a summary of the transactions in their savings accounts.
- 6. Set forth below are specific portions of Mr. Glasser's testimony at the trial herein and Mr. and Mrs. Glasser's comments:

- (a) "Q. When did you receive the \$120,000 that you put into the savings bank? A. When did I receive it?
 - Q. Yes. A. I never received it.
 - Q. When did your wife receive it? A. Well, my wife happened to be the furrier—a daughter of one of the leading fur manufacturers of the 1930s and 1940s. We were married in 1934. For the first ten years of our married life we lived with our in-laws, my father-in-law and my mother-in-law. They paid for everything, rent, food and clothing. My father-in-law passed away in 1940. He left an estate. Part of it went to my wife. My mother-in-law passed away in 1944. She left an estate. Part of that estate ment to my wife. Most of that money belongs to my wife" (Tr. 415).
 - "Q. When you got all this money from your wife —A. I didn't get money; my wife got money.
 - Q. In joint accounts? A. No, that was her money.
 - Q. You testified that they are in joint accounts? A. Now.
 - Q. Now? When did they go into joint accounts? A. I have no recollection. Some time ago, a long time ago.
 - Q. How long? A. I don't know. Maybe 20 years ago, maybe more" (Tr. 420-21).
 - "Q. Do you recall that you said that you had approximately \$120 [sic] in savings bank in 1972? A. I have it now, yes.
 - Q. Did you have it in 1972? A. Yes, I did.
 - Q. You now recall? A. Yes.

- Q. I believe you testified it came from your wife's inheritance; is that correct? A. Most of it did.
- Q. Most of it did? A. Yes" (Tr. 970).

 Comment: Approximately \$40,000 to \$50,000 came from Mrs. Glasser's parents.
- (b) "Q. Did your wife work during the years you worked for the Association? A. My wife has never worked one day in her life" (Tr. 421).

Comment: Mrs. Glasser in 1969 worked for a few weeks for Silver Towne Associates, Inc., as shown on the Form W-2 included with the 1969 income tax return. Her son, Michael, worked for the firm, and she only assisted in the shop for a short period. She did not originally expect to be paid, and Mr. Glasser did not consider this "work" when he answered the question.

- (c) "Q. Did you report on your tax returns the money that you testified here that you got from these manufacturers? A. I don't recall if I did or I didn't.
 - Q. You don't recall? A. I don't recall if I did or I didn't.
 - Q. And you threw away your tax returns? A. I did.
 - Q. How much money did you make outside your salary with reference to the money from these manufacturers in 1967? What is the total amount that you got? A. I can only answer this in one way, that the whole shooting works amounted to about 15 or 16,000 dollars, that is, in total.
 - Q. That you got? A. No, no, in total.

Q. From when to when? A. From '67 to the end of '69" (Tr. 422).

Comments: Answer referred to specific manufacturers that he had testified about.

(d) "Q. What did you do with your share? A. Put in my pocket.

Q. Did you put it in the bank? A. We spent that money.

Q. You spent that money? A. Oh, yes" (Tr. 423).

Comment: Some of the money may have been deposited.

- 7. Set forth below are specific portions of Mrs. Glasser's testimony at the trial herein and Mr. and Mrs. Glasser's comments:
 - (a) "Q. Mrs. Glasser, you testified in March, 1940, your father died? A. That is correct.

Q. And left some money for your mother and you and your brother and sister? A. Right.

Q. Your share of that was approximately \$60,000? A. Yes, between 50 and 60,000. I can't give you the exact figure.

Q. How much of that was cash and how much of that was stocks? A. That was total in value.

Q. Total in value, \$60,000? A. That is right.

Q. When your mother died you received another 30 or 40,000? A. That is right.

Q. In either stocks or bonds? A. And valuable jewelry.

Q. The 30 or 40,000 dollars—A. That was separate, and valuable jewelry.

Q. Let me finish my question. The 30 or

40,000-dollar figure that you gave us includes the jewelry? A. No, sir.

Q. It doesn't include the jewelry? A. No, sir.

Q. How much was the jewelry worth? A. I never put a value on it. This was sentimental jewelry. I still have that jewelry.

Q. I want to get clear the figures from the two estates. You have a hundred thousand dollars in stocks and bonds? A. Right.

Q. Starting in 1940 and then in 1944? A. Right, sir" (Tr. 470-71).

"Q. So that in '45 there was approximately \$100,000 in savings accounts? Is that correct? A. Yes, sir" (Tr. 474).

Comment: Approximately \$40,000 to \$50,000 came from Mrs. Glasser's parents. She misunderstood the questions.

- (b) "Q. Did your husband have or did you have a safety deposit box in 1967 in New York? A. Yes, sir.
 - Q. Where was that? A. In Queens.
 - Q. What did you have in there? A. The exact thing I have now in my safety deposit box, stocks, bonds and my jewelry.
 - Q. No cash? A. No, sir.
 - Q. Do you have any cash in the house? A. No, sir" (Tr. 482).

Comment: Cash was kept in the safe deposit box for short periods. Mr. and Mrs. Glasser had kept cash in a safe deposit box on a long-term basis in the 1940's and 1950's because of fear of bank failures. They did not keep cash in the safe deposit box in 1967 on such a long-term basis.

(c) "Q. Did your husband carry a lot of cash with him in his pockets at any time that you can recall? A. I would not recall that unless we went shopping and if we didn't have—if they wouldn't accept our check, we would have cash on us, yes.

Q. You say that he sometimes carried \$1,000 in cash in his pockets? A. No, sir, not that I saw.

Q. None that you saw? A. No, sir" (Tr. 484).

Comment: Mr. Glasser normally did not carry a large amount of cash. He did bring home a lot of money in cash at Christmas.

JOHN C. SABETTA, Assistant United States Attorney

Sworn to before me this 23rd day of May, 1974

IOLA WALKER Notary Public, State of New York

Exhibit 1, Annexed to Foregoing Affidavit

JACK AND BETTY GLASSER FUNDS FROM VARIOUS SOURCES

	FUNDS PROM	ARTOOS	DOCTORD	
Item	1967	1968	1969	
Wages	10,374.00	10,660.00	13,934.00	
Dividends	766.40	970.38	1,187.34	
Interest	3,503.16	3,828.59	4,367.28	
Amount Retai of Illegal I ments Previ- ly Disclosed Amount Reta of Illegal I ments from	ned Pay- ous- 709.00 nined Pay-	1,984.00	2,350.00	
Other Union Manufacture	Fur	7,275.00	6,825.00	
Sale of Jew Christmas		5,000.00	Profit sale be incom	of gift could
Gifts 2	2,500.00	2,500.00	2,500.00	if
Wholesale Commissions	3 3,500.00	3,500.00	3,500.00	income
Vacation Gifts 4	600.00	600.00	600.00	
Overtime Expenses	500.00	500.00	500.00	income
Miscellaneou Commission		500.00	500.00	income Total
Total	\$29,977.56	\$37,317.97	\$36,263.62	\$103,559.15

 Amount is approximate. Mr. Glasser stated the proceeds of sales of jewelry in 1968 and 1970 were approximately \$10,500.

2. Amounts are approximate. Mr. Glasser stated that he received \$2,000 to \$3,500 a year in cash as Christmas gifts from fur manufacturers.

3. Amounts are approximate. Mr. Glasser stated that such commissions averaged \$3,000 to \$5,000 a year.

4. Amounts are approximate. Mr. Glasser stated that he received \$600 to \$700 a year from fur manufacturers as vacation presents.

5. Amounts are approximate. Mr. Glasser estimated that he received a total of approximately \$2,000 in such commissions during the years 1967-70.

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Exhibit 1, Annexed to Foregoing Affidavit

EXPENSES SHOWN ON TAX RETURNS

Item	1967	1968	1969	
Federal				
Income Tax	2,168.92	2,040.01	2,808.95	
Other Taxes	1,085.65	915.23	990.54	
Interest		174.00		
Drugs	350.00	500.00	495.00	
Other				
Medical	1,017.50	1,035.00	1,672.85	
Medical				
Insurance		230.00	300.00 ⁶	
Cash Con-				
tributions	450.00	550.00	550.00	
Miscellaneous	20.00	677.00	787.42	
				Total
Total	\$5,092.07	\$6,121.24	\$7,604.76	\$18,818.07
Amount Funds				
Sources Exceed				
Shown on Tax	Total			
2.1010.11 011 2.411	\$24,885.49	\$31,196.73	\$28,658.86	\$84,741.08
	SAVI	NGS ACCO	UNTS	
	2			Total
Cash				
Deposits	11,151.05	13,950.00	22,500.00	47,601.05
Deposits by				
Check	1,901.10	942.27	1,400.83	4,244.20
Interest 7	3,475.72	3,828.59	4,367.28	11,671.59
Total	\$16,527.87	\$18,720.86	\$28,268.11	\$63,516.84
Withdrawals	\$10,000.00		\$13,880.00	\$23,880.00

^{6.} Minimum amount indicated by return.

^{7.} Interest as shown by income tax returns for accounts in The East New York Savings Bank, The Greenwich Savings Bank and the Emigrant Savings Bank. Interest of \$27.44 from the Dollar Savings Bank for 1967 is omitted.

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

73 Cr. 614 (LWP)

UNITED STATES OF AMERICA

__v_

GEORGE STOFSKY, CHARLES HOFF, AL GOLD and CLIFFORD LAGEOLES.

Defendants.

State of New York, County of New York, Southern District of New York, ss.:

FRED H. HINCK, being duly sworn, deposes and says:

- 1. I am an Assistant Vice President of The East New York Savings Bank, by whom I have been employed for approximately 41 years. I work and have my business office at a branch of the bank located at 58-14 99th Street, Corona, Queens, New York 11368.
- 2. At approximately 11:50 a.m. on February 13, 1974, The East New York Savings Bank, at the above mentioned branch, was served by the defendants in *United States* v. Stofsky, et al., 73 Cr. 614, with a trial subpoena duces tecum, dated February 13, 1974. That subpeona commanded that at 9:30 a.m. on February 14, 1974, The East New York Savings Bank appear in Room 618 of the United States Courthouse for the Southern District of New York and produce records pertaining to the accounts of Jack Glasser

and Betty Glasser for the period 1967 through 1972 including, but not limited to, copies of account cards, monthly statements, application forms, loan transactions, credit inquiries and safe deposit boxes.

- On February 13, 1974, after the receipt of said subpoena, I telephoned defendants' attorneys, Weiss Rosenthal Heller & Schwartzman, 295 Madison Avenue, New York. New York. I identified myself and asked to speak to one of the attorneys participating in the trial of United States v. Stofsky, et al. None was available, and I was referred instead to a man I believe named Mr. Horowitz, to whom I spoke. I advised Mr. Horowitz that the bank would be unable, on one-half day's notice, to produce the next morning all the documents called for by defendants' subpoena duces tecum, since some of the documents for the years 1967 through 1970 were stored in an archive at a Brooklyn branch of the bank. I asked whether it would be possible to adjourn the return date of the subpoena. Mr. Horowitz advised me that the subpoena could not be adjourned and that the bank should appear as directed with whatever pertinent documents it was able to produce.
- 4. Following the completion of my conversation with Mr. Horowitz, I instructed bank employees to prepare transcripts of any Glasser accounts for the period 1967 through 1973 and cull from the branch's files pertaining to the Glasser accounts any checks issued to the Glassers, all large deposit and withdrawal tickets, signature cards and collection drafts. By early evening hours a transcript for the entire period had been prepared and pertinent documents for the years 1971, 1972, and 1973 accumulated for reproduction.
- 5. I worked at the bank that entire evening and the next morning until 2:00 a.m. repairing a reproduction ma-

chine and copying the Glasser documents earlier culled from our files. I remained at the bank overnight and the next morning, February 14th, when Mr. Peter Russack, Assistant Vice-President of the bank, arrived at work, I transferred to him in one envelope the transcripts of the Glasser accounts for the period 1967 through 1973 as well as the originals of the Glasser documents culled from our files, and in a second envelope the copies I had prepared of the documents taken from our files. I instructed Mr. Russack to produce both envelopes and their contents at the time and place commanded by the subpoena; and I further instructed Mr. Russack to surrender to the appropriate party the envelope containing copies of the documents and to turn over also the sole set of transcripts which had been placed in the envelope with the original bank documents. My purpose in forwarding the original documents, as well as copies thereof, was to provide defendants' counsel with an opportunity to view both and assure themselves of the authenticity and accuracy of the copies. Thereafter Mr. Russack departed.

- 6. About noon on February 14, 1974, Mr. Russack returned to the bank and advised me he had produced the envelope containing copies of the bank documents and that he had later been advised by one of defendants' attorneys that he was free to depart. He further advised me that no further requests had been made of him or the bank following production of the documents as aforesaid. At that time Mr. Russack returned to me the envelope containing the original documents he had carried to the United States Courthouse earlier that day and that envelope and its contents were thereafter placed in the bank's vault.
- 7. The following day, February 15th, I withdrew from the vault the above-mentioned envelope containing the original documents and discovered therein the transcripts of

the Glasser accounts which inadvertently had not been surrendered pursuant to the subpoena duces tecum the preceding day. I telephoned the firm of Weiss Rosenthal Heller & Schwartzman that day and spoke to a Mrs. Clarkson. lieve I advised her that the Glasser transcripts had not been surrendered at the trial court the prior day because of inadvertence and that I would forward the same to the firm by mail. I further advised her that the Glasser deposit and withdrawal tickets for 1967 through 1970, which were maintained at the Brooklyn archive and whose production the subpoena did not specifically command, had not been produced the preceding day pursuant to the subpoena duces tecum. I asked whether it was necessary for the bank to produce the same at the trial in light of the fact that on the preceding day no request had been made of Mr. Russack to do so. Mrs. Clarkson requested only that we gather the remaining documents and send them along to the firm to complete their file.

8. On the next business day, Tuesday, February 19, 1974, I forwarded by mail to Weiss Rosenthal Heller & Schwartzman, to the attention of a Mr. Abramowitz, the transcripts of the Glasser accounts. That same day I made a request in writing of the banks Brooklyn archive to produce the deposit and withdrawal tickets for the period 1967 through 1970. I have been advised by Mr. Russack that our branch of the bank did thereafter receive copies of the requested documents, which Mr. Rusack forwarded to Mrs. Clarkson at Weiss Rosenthal Heller & Schwartzman under cover of a letter dated March 6, 1974.

FRED H. HINCK Assistant Vice President The East New York Savings Bank

Affidavit of Peter Russack

Sworn to before me this 23 day of May, 1974

James F. Talbot Notary Public, State of New York

Affidavit of Peter Russack

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

73 Cr. 614 (LWP)

UNITED STATES OF AMERICA

__v_

GEORGE STOFSKY, CHARLES HOFF, AL GOLD and CLIFFORD LAGEOLES,

Defendants.

State of New York, County of New York, Southern District of New York, ss.:

PETER RUSSACK, being duly sworn, deposes and says:

 I am an Assistant Vice President of The East New York Savings Bank, by whom I have been employed for

Affidavit of Peter Russack

approximately 40 years. I work and have my business office at a branch of the bank located at 58-14 99th Street, Corona, Queens, New York 11368.

- 2. On the morning of February 14, 1974, Mr. Fred H. Hinck, an Assistant Vice President of The East New York Savings Bank, at the above-mentioned branch, handed to me two envelopes which he said contained certain bank records relating to accounts in the name of Jack Glasser and Betty Glasser, including transcripts of said accounts for the period 1967 through 1973, and requested that I produce them that morning in room 618 of the United States Courthouse for the Southern District of New York pursuant to a trial subpoena duces tecum served on the Based on information I received that morning, I believed that one envelope contained the bank's original records and the other envelope copies of the same. I understood that the copies were to be surrendered pursuant to the subpoena and the originals were to be made available to counsel, if desired, to check the authenticity and accuracy of the copies.
- 3. I did as requested and carried the two envelopes and their contents to the United States Courthouse where, upon request, I transferred custody of the envelope containing the copies to a court clerk in Room 618. He thereafter transferred custody of the envelope and its contents to an individual who earlier had identified himself to me as one of defendants' attorneys and whose name I have since come to believe is Mr. Sonberg. Mr. Sonberg advised me shortly thereafter that having produced the bank's records as aforesaid, I was under no requirement to remain. He made no request that the bank produce any other documents or that he be allowed to view the originals of the copies he received. I departed and returned to the bank where I reported the

Affidavit of Peter Russack

foregoing to Mr. Hinck and returned to him the envelope I understood contained the original bank documents in its unopened state.

4. Prior to March 6, 1974, the branch of the Bank where I work received from the bank's Brooklyn archive copies of various deposit and withdrawal tickets for the above mentioned Glasser accounts for the period 1967 through 1970. Under cover of letter dated March 6, 1974, I forwarded copies of the same to Weiss Rosenthal Heller & Schwartzman, to the attention of a Mrs. Clarkson—as previously instructed so to do by Mr. Hinck.

PETER RUSSACK
Assistant Vice President
The East New York Savings Bank

Sworn to before me this 23 day of May, 1974.

(Notary Stamp Illegible)

Affidavit of Bruce C. Saxton

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK 73 Cr. 614 (LWP)

UNITED STATES OF AMERICA

--v.--

GEORGE STOFSKY, CHARLES HOFF, AL GOLD and CLIFFORD LAGEOLES,

Defendants.

State of New York, County of New York, Southern District of New York, ss.:

BRUCE C. SAXTON, being duly sworn, deposes and says:

- 1. I am an Assistant Vice President of The Greenwich Savings Bank, by whom I have been employed for approximately 25 years. My business office is at a branch of the bank located at Broadway and Sixth Avenue at 36th Street, New York, New York 10018.
- 2. On or about April 10 or 11, 1974, The Greenwich Savings Bank, at the above-mentioned branch, was served by the defendants in *United States* v. Stofsky, et al., 73 Cr. 614, with a subpoena duces tecum dated April 10, 1974. That subpoena called for the production of the records pertaining to the accounts of Jack and Betty Glasser for the period 1967 through 1972, including, but not limited to, account cards, transcripts of accounts, application cards, and deposit and withdrawal slips.

Affidavit of Bruce C. Saxton

- 3. The bank's records relating to the accounts of Jack and Betty Glasser—Regular Account #A 190176-7 and Time Deposit #A 190176-7—were maintained at the same branch upon which the subpoena duces tecum had been served.
- 4. On April 16, 1974, approximately three business days after service on the bank of the subpoena duces tecum, The Greenwich Savings Bank supplied to Weiss Rosenthal Heller & Schwartzman, counsel for the defendants named in the caption of this matter, a transcript of the above said accounts of Jack and Betty Glasser for the period 1967 through 1972, as well as copies of the deposit and withdrawal slips and teller's checks pertinent to said accounts for that period.
- 5. Had The Greenwich Savings Bank been served with an appropriate trial subpoena duces tecum on any date in February, 1974, copies of the documents described in paragraph 4 herein could have been produced by the bank within no more than two business days and probably even less had the bank been advised of the existence of exigent circumstances.

BRUCE C. SAXTON
Assistant Vice President
The Greenwich Savings Bank

Sworn to before me this 23 day of May, 1974.

ANNE LYONS

Affidavit of George F. Rickey

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK 73 Cr. 614 (LWP)

UNITED STATES OF AMERICA

-v.-

GEORGE STOFSKY, CHARLES HOFF, AL GOLD and CLIFFORD LAGEOLES,

Defendants.

State of New York, County of New York, Southern District of New York, ss.:

George F. Rickey, being duly sworn, deposes and says:

- 1. I am a Vice President of the Emigrant Savings Bank, by whom I have been employed for approximately 40 years. I have my business office and work at a branch of the bank located at 393 Seventh Avenue, New York, New York 10001.
- 2. On April 10, 1974, the Emigrant Savings Bank was served by the defendants in *United States* v. Stofsky, et al., 73 C. 614, with a subpoena duces tecum, dated April 10, 1974. The following day that subpoena was received at the branch where I work. The subpoena called for the production of the records pertaining to the accounts of Jack and Betty Glasser for the period 1967 through 1972, including, but not limited to, account cards, transcripts of accounts, application cards and deposit and withdrawal slips.

Affidavit of George F. Rickey

- 3. The bank's records relating to the account of Jack and Betty Glasser—Account No. 68971—were maintained at the branch at which I work.
- 4. On Friday, April 12, 1974, the Emigrant Savings Bank prepared a transcript of the account of Jack and Betty Glasser for the period of 1967 through 1972 and prepared from its files copies of the deposit and withdrawal slips and teller's checks pertinent to said accounts for that period. On the following Monday or Tuesday, April 15th or 16th, the foregoing documents were supplied to Weiss Rosenthal Heller and Schwartzman, counsel for the defendants named in the caption of this matter.
- 5. Had the Emigrant Savings Bank been served with an appropriate trial subpoena duces tecum on any date in February, 1974, copies of the documents described in paragraph 4 herein could have been produced by the bank within approximately three to four days.

GEORGE F. RICKEY Vice President Emigrant Savings Bank

Sworn to before me this 23rd day of May, 1974.

DENNIS R. DE FILLIPO

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK 73 Cr. 614 (LWP)

UNITED STATES OF AMERICA

-against-

GEORGE STOFSKY, CHARLES HOFF, AL GOLD and CLIFFORD LAGEOLES,

Defendants.

State of New York, County of New York, ss.:

ELKAN ABRAMOWITZ, being duly sworn, deposes and says:

1. I am a member of the firm of Weiss Rosenthal Heller & Schwartzman, co-counsel for the defendants in the above-entitled case, and submit this affidavit in further support of defendants' pending motion for a new trial and in response to the affidavits of Assistant United States Attorney John C. Sabetta, Messrs. Fred H. Hinck, Peter Russack, Bruce C. Saxton, and George F. Rickey, all sworn to on May 23, 1974, submitted by the government in opposition to this motion. All statements contained herein are based upon information and belief unless otherwise indicated.

Introduction

2. Both as a matter of procedure and of substance, the government's response to the instant motion is both shocking and disturbing—shocking and disturbing both be-

cause of its total inadequacy in meeting the issues raised by defendants' motion and, perhaps more importantly, because of its cavalier disregard of the fundamental concepts of integrity and fairness in the administration of criminal justice.

Procedure: the Ex Parte Affidavit

In what must be regarded minimally as a highly irregular procedure, the government has submitted to the Court an ex parte affidavit apparently detailing Mr. Glasser's new claims of additional payments allegedly received from other maunfacturers and given to these defendants. Since this affidavit has not been served upon defendants' counsel, we obviously cannot undertake to make any response to it, and we submit that defendants have a clear constitutional right to see the affidavit before this motion is submitted and decided. If the government believes that it is in the public interest to withhold the contents of the affidavit at this time, the government should have requested that the Court's decision on this motion be deferred until such time as the affidavit may be revealed. Failing such a request by the government, the Court should defer decision of this motion until such time as the defendants have had an opportunity to respond to the affidavit. Put simply, it would be an obvious and serious violation of defendants' due process rights to have a motion of such importance as this decided, even in part, upon an ex parte submission by the government.

Substance: Summary of Argument

4. If, however, the Court is inclined to decide the motion at this time, it is respectfully submitted that the government's own papers, when subjected to careful scrutiny, reveal the vacuity of its position on this motion and that

upon all the evidence before the Court, the motion should, indeed must, be granted to avoid both a serious miscarriage of justice and a violation of defendants' constitutional rights. Defendants contend first that the information uncovered by the defense concerning the large cash deposits during the relevant period should have been uncovered and disclosed by the government before the trial and disclosed at that time to the defendants under the principles of Brady v. Maryland, 373 U.S. 83 (1963) and the general requirements of due process. By failing to conduct a reasonable investigation of Mr. Glasser's claims and by failing to turn over to the defendants copies of Mr. Glasser's tax returns, the government, albeit negligently, ignored these principles and for this reason alone, a new As indicated in Defendants' Suppletrial is mandated. mental Memorandum of Law, this obligation does not depend upon the exercise of due diligence on the defendants' part, and the government's failure to meet this obligation cannot be excused by placing the burden on the defendants. Secondly, even if the Court treats the motion simply as one based on newly discovered evidence, the affidavit of Elkan Abramowitz, Esq., sworn to on April 22, 1974, as amplified herein, clearly and unequivocally belies the government's claim that defendants did not exercise diligence with respect to this matter. Lastly, we submit that, despite the length of the government's papers, the simple and plain fact is that even now no explanation of the perjurious testimony given by Mr. and Mrs. Glasser has been offered. the government has sought to camouflage that perjury by creating a smokescreen of patently unbelievable "explanations" and detail. The perjury, however, cannot be either excused or disregarded, since it involved not merely peripheral issues of credibility, but went to the essence of the issues which the jury was asked to determine in this case: whether Mr. Glasser in fact paid monies received from fur manufacturers to the defendants as he claimed or whether, as the defendants strenuously urged throughout, he kept such monies himself.

The Government's Failure To Investigate and Disclose

- As indicated at length in our Supplemental Memorandum of Law, defendants submit that the very issues with which this Court is now faced need not, and should not, have arisen if the government had met its basic obligations Defendants submit that the under Brady v. Maryland. information which has now been uncovered would have been revealed before the trial if the government had turned over to the defendants copies of the 1967 through 1972 tax re-These returns were exclusively turns of Jack Glasser. within the possession of the government and contained information which would clearly have aided the defendants. As such, the prosecution was charged with the obligation of turning them over. If the returns had been turned over, the defendants could then have conducted the investigation which they did conduct during and after the trial, and would have discovered the evidence of Mr. Glasser's large Additionally, we submit that the governcash deposits. ment itself should have conducted the same type of routine investigation with respect to the veracity of Mr. Glasser's claims in light of the information contained in those re-Certainly, if the results of such an investigation would not have avoided an indictment, they would have at least avoided the perjury that concededly was committed by the Glassers at the trial on an issue crucial to the defense.
 - 6. Unfortunately, the government's response to this argument indicates that their over-zealous desire to sustain the verdict in this case is more important than a finding based upon truth. But, as the courts have often noted, the failure of the prosecution to recognize the fundamental requirements of due process and fairness cannot be over-looked, and when injustice results, an improperly obtained

conviction cannot be allowed to stand. See United States v. Zborowski, 271 F.2d 661, 668 (2d Cir. 1959) ("In the long run it is more important that the government disclose the truth so that justice may be done than that some advantage might accrue to the prosecution toward ensuring a conviction."). And this obligation is not dependent upon whether the defendants exercised due diligence. This obligation is imposed upon the prosecution irrespective of the conduct of the defense and cannot be escaped merely by asserting that the defendants did not act diligently enough. It is unfortunate that the government has chosen to dismiss this contention as "frivolous" rather than recognizing that the ends of justice are not well served by improperly obtained convictions. But we respectfully submit that it is incumbent upon this Court to reaffirm that principle and order a new trial based upon the government's negligent failure to meet its obligations.

Government's Claim That Defendants Failed to Exercise Due Diligence

7. Since the government has chosen to question counsel's credibility concerning the subpoena to the East New York Savings Bank, the following additional information is necessary: we received a copy of Mr. Glasser's 1972 income tax return on February 11, 1974. On February 13, 1974 (February 12, 1974 was a Court and bank holiday), I caused subpoenas to be served upon the three banks listed on Mr. Glasser's 1972 tax return, one of which was the East New York Savings Bank. On February 13, 1974, while I was in court, Mr. Hinck from the East New York Savings Bank telephoned my office and spoke to my partner, Richard F. Horowitz, Esq., requesting an adjournment of the subpoena. Mr. Horowitz refused to grant an adjournment, and on February 14, 1974, the return date of the subpoena, a representative of the East New York Savings Bank ap-

peared in court and handed to my associate, Michael R. Sonberg, Esq., some of the documents called for by the subpoena. The bank's response did not include deposit slips or a transcript of the account. The bank representative did not indicate to Mr. Sonberg that the bank had transcripts and original documents available for use and inspection.

8. On February 15, 1974, Mr. Hinck telephoned my office while I was in court and spoke to my secretary, Miss Clarkson. He told her that he had failed to submit-in response to our subpoena-transcripts of Mr. Glasser's accounts and deposit and withdrawal tickets which were maintained in storage. He asked Miss Clarkson whether we were still interested in receiving these documents. Clarkson informs me that she told Mr. Hinck she would speak to me either during a court break or at the end of the court day and would call him back. At the end of the court day, which was a Friday, I spoke to Miss Clarkson and told her to call Mr. Hinck back and tell him that we needed the material as quickly as he could obtain it since we were on trial. I said to tell him that if there was any additional expense incurred in obtaining the material quickly, we would, of course, bear any such expense. Since it was then too late for Miss Clarkson to call Mr. Hinck that day and Monday, February 18, 1974 was a bank holiday, Miss Clarkson telephoned Mr. Hinck on Tuesday, February 19, 1974. She told him that we needed the materials as soon as possible and that we would bear any additional expense in obtaining said materials. Mr. Hinck agreed to send the transcript to us immediately and said that the other documents would follow as soon as they were ready. At the end of that court day, Miss Clarkson informed me of the telephone call to Mr. Hinck-of which we have a record -and told me of Mr. Hinck's response. Contrary to the assertion in Mr. Hinck's affidavit, at no time did Miss

Clarkson inform Mr. Hinck in words or substance that Mr. Hinck was free to take as much time as he wanted with these documents since we only needed them for "our files". Quite the opposite was true: Miss Clarkson reiterated the importance of having these documents as soon as physically possible because we needed them for a trial then in progress.

- 9. On February 21, 1974,* I received the transcripts of Mr. Glasser's account in the East New York Savings Bank by mail with a covering letter from Mr. Hinck dated February 19, 1974. A copy of Mr. Hinck's letter of February 19, 1974 with my firm's receipt stamp affixed to the back of the letter is annexed hereto as Exhibit "A." I might note that the government submitted the affidavit of Mr. Hinck without showing even the minimal courtesy—or caution—of informing me that Mr. Hinck was quoting (actually misquoting) my secretary and without attempting to verify the accuracy of Mr. Hinck's account. In any event, should the government continue to rely on Mr. Hinck's affidavit, an evidentiary hearing on this issue will certainly be required.
- 10. While it is true that some of the transcripts which we received from the East New York Savings Bank on February 21, 1974 did reveal large deposits, there was no basis upon which we could determine—or assume—the source of these deposits to be cash received between 1967 and 1969. Given the frequent large transfers of sums from account to account disclosed in the transcripts received from the First Federal Savings & Loan Association and the Williamsburgh Savings Bank on February 14, 1974, we had

^{*}Paragraph 7 of my affidavit, sworn to April 22, 1974, indicates that I received information from the East New York Savings Bank on February 20, 1974; it should read February 21, 1974.

no good faith grounds upon which to conclude that the sums in the East New York Savings Bank were not similar transfers from other bank accounts. Contrary to the blithe suggestion of the government, the question facing counsel on and after February 21, 1974 was not whether we could use these documents to cross-examine Mr. Glasser (the government having rested on February 20, 1974), but only whether we could introduce these transcripts on the defense case as substantive evidence to impeach Mr. Glasser's credibility. I concluded that I could not responsibly offer these transcripts as such evidence because they in fact were not inconsistent with Mr. Glasser's sworn testimony that he received the \$120,000 from his wife's parents years before. The simple fact is the transcripts proved nothing in this regard. Therefore, since the government had already rested, I did not have a good faith basis to request a continuance in order to wait for Mr. Hinck to obtain his bank's documents from storage—a procedure which ultimately took him fourteen days from February 19, 1974-or to await a response from potential subpoenas to the Greenwich or Emigrant Savings Bank, bank accounts of the Glassers revealed for the first time on tax returns submitted by the government on February 20, 1974-on the vague hope that the evidence might prove damaging. The government characterizes this judgment as a conscious withholding of favorable evidence; I cannot accept such a characterization, for, as an officer of the court, I could not then have attempted to introduce the transcripts without verification that the deposits reflected on the transcripts were in fact new cash deposits made during the period 1967 to 1970. Contrary to the government's contention, the concept of "due diligence' cannot and does not require that counsel act irresponsibly. Much as the government may wish or suggest otherwise, the fact is we did not receive evidence that Mr. Glasser made substantial cash deposits during the relevant period until March 7, 1974, after we took all reasonable steps to investigate this matter.

The Government's "Explanation" of the Perjury

11. The government's papers contain little more than a transparently disingenuous effort to sustain the verdict in this case by continued reliance upon the uncorroborated claims of Jack and Betty Glasser who—the government admits—testified falsely during the trial.

Confronted with the evidence discovered by the defendants after the trial—evidence which relates not only to ancillary portions of Mr. Glasser's testimony, but to the central issue in the case—the government states that it once again interviewed Jack and Betty Glasser on four occasions and that "Mr. Glasser affirmed that his prior testimony about such payments to defendants was entirely truthful." And, it appears, that Mr. Glasser's "affirmation" to the government is the fundamental basis of opposition to defendant's motion.

The Sabetta affidavit-relying wholly upon Mr. and Mrs. Glasser's unsworn statements—purports to "explain" the sources of the large amounts of cash deposits which were discovered by the defendants in their bank accounts. The purported explanation of the source of these funds is, however, wholly incredible. First, and perhaps not surprisingly, Mr. Glasser now claims that he received cash from numerous other fur manufacturers, a portion of which he now says he paid to one or more of the defendants. Indeed, Mr. Glasser now-supposedly for the first time-has revealed to the government that he retained illegal payments in 1967 of \$7,025, some ten times the \$709 to which he had testified previously. He now says he retained illegal payments in 1968 of \$7,275, some three times the \$1,984 to which he had previously testified. And he now further says that in 1969 he retained not \$2,350 in illegal

payments, but \$6,825. It is not difficult to understand why Mr. Glasser would be contriving such claims now, rather than earlier, since it is only now that he has been confronted with documentary evidence that he perjured himself. Faced with the fact that his prior attempt to explain the source of his finances as an inheritance from his in-laws was clearly false, Mr. Glasser is now attempting to further implicate the defendants in order to avoid the consequences of his prior perjury. And the government—once again without any corroboration—has chosen blithely to accept these claims at face value and asks this Court to credit them. Significantly, the government does not suggest that the jury would have accepted them.

- 13. The Sabetta affidavit also lists six other purported sources of the previously unexplained funds; sale of jewelry (although Mrs. Glasser testified that she never sold her jewelry, see Sabetta affidavit, p. 6); "Christmas gifts" from unnamed manufacturers of \$2,000-\$3,500 per year in cash (although Mrs. Glasser previously testified that she never saw as much as \$1,000 in cash in her husband's possession, see Sabetta affidavit, p. 8); "wholesale commissions" of \$3,000-\$5,000 per year (although his tax returns did not indicate he was in the wholesale fur business); "vacation gifts" of \$600-\$700 per year from unnamed maunfacturers; "overtime expenses"; and "miscellaneous commissions" (without any clear explanation as to what these items of income really are).
 - 14. Without belaboring the obvious, it must be noted that there is no documentation whatsoever of any of these alleged transactions, there is no specification of the amounts received except in the most general terms, and none of these items were reported on Mr. Glasser's tax returns. In short, there is no reason to believe that any of these "explanations" is any more truthful than the previously fabri-

cated story that all of the money came from Mrs. Glasser's parents.

15. The government has chosen to set forth in its affidavit several portions of Mr. Glasser's trial testimony and to offer "comments" on them from Mr. & Mrs. Glasser. Although we do not wish to burden the Court with unnecessary detail, certain responsive comments must be made. First, the quoted portions include several admittedly perjurious statements: that Mr. Glasser never received the \$120,000; that it was his wife that received the money; that the money was deposited more than twenty years ago; that most of the money came from his wife's inheritance; that all the money received from fur manufacturers was spent and not deposited; that Mrs. Glasser's jewelry was not sold; that there was approximately \$100,000 in savings accounts in 1945; that no cash was kept in safe deposit boxes; that Mr. Glasser never carried more than \$1000 in cash. And the explanations of these statements are themselves virtually incredible: that \$40,000-\$50,000 of the cash came from Mrs. Glasser's parents (although the probate papers reveal no such amounts); that Mr. Glasser-in testifying that the total monies he received in illegal payments from 1967 through 1969 came to \$15,000 or \$16,000-was referring only to the specific manufacturers which he had previously revealed, when his obligation to the government, the grand jury and the petit jury was to tell the "whole truth"; that Mrs. Glasser "misunderstood" the questions regarding the sources of the funds (the only purpose for which she was called as a witness); and that cash was kept in a safe deposit box on a "long-term basis" because of fear of bank failures in the 1940s and 1950s. That such nonsense is seriously advanced by the government at this point is a disservice to the concept of responsible prosecution.

Simply stated, the government is continuing the course of conduct which has created this situation in the first place by accepting, without corroboration, the word of Jack and Betty Glasser who have already concededly committed perjury, and asking this Court to condone that conduct and disregard the denial of due process rights of these defendants. It is respectfully submitted that the fair and proper administration of justice requires more-far more -than merely obtaining convictions. It requires that all concerned, the defendants, the government, and the Court, recognize that a verdict based upon perjury is so tainted that where such perjury is shown to exist, a new trial, free of such perjury, must be granted. "The dignity of the United States Government will not permit the conviction of any person on tainted testimony." Mesarosh v. United States, 352 U.S. 1, 7 (1956).

Under The Applicable Authorities, A New Trial Must Be Granted

- 17. At Point II of its memorandum, the government contends that the appropriate standard by which to judge this motion is the "would probably produce a different verdict" standard of Berry v. State, 10 Ga. 511, 527 (1851) rather than the "might not have convicted" standard of Larrison v. United States, 24 F.2d 82, 87 (7th Cir. 1928). However, we submit that even under the Berry test, a new trial is mandated in this case.
- 18. The cases cited by the government do not support a contention that a new trial is not warranted. All of those cases involved claimed evidence relating to peripheral issues at the trial; none involved an admitted perjury relating to the central question in the case, as we have here. In *United States* v. *DeSapio*, 435 F.2d 272 (2d Cir. 1970), the basis for defendant's motion for a new trial was not perjury by a central witness on a crucial facet of the prosecution;

rather, it concerned the possibility of errors in eye-witness identification by two of four eye-witnesses. In *United States* v. *Marquez*, 363 F. Supp. 802 (S.D.N.Y. 1973), aff'd, 489 F.2d 753 (2d Cir. 1974), the only instance of perjury found by Judge Weinfeld "was totally unrelated to the guilt or innocence of the defendants and was, as the FBI agents noted, 'insignificant' and 'not really relevant' to the investigation they were conducting." 363 F. Supp. at 806. And, in *United States ex rel. Rice* v. *Vincent*, 491 F.2d 1326 (1974), the Second Circuit, faced with a recantation of a witness who had recanted previously, stated that it was "not reasonably well satisfied that Barnes' testimony at trial was false." 491 F.2d at 1332.

The instant case is quite different. There is certainly no question here that testimony given at trial was false-the government admits it was. Nor can there be a claim that the perjury was "unrelated to the guilt or innocence of the defendants," since the question of what Mr. Glasser did with the monies he received was the central issue in the case. The government, in a vain attempt to support its theory that evidence of the Glasser perjury would have had no effect on the verdict, points to the alleged "corroboration" of Glasser's testimony by Mr. Ginsberg at trial and the statements of Messrs, Sherman, Hessel and Cohen on their respective allocutions at the time of their pleas of guilty. However, the government ignores the plain fact that none of them testified or stated that they knew that Glasser was giving any of the monies they gave him to the defendants, and none of their statements were inconsistent with the defense contention, urged in summation, that Mr. Glasser was "conning" the manufacturers into believing their money was being passed on (see, e.g., T. 1820-1825). They stated only that they gave money to Mr. Glasser, relying solely on his word that the money was given to the Union-a point which defendants have never contested.

- 20. Nor is the testimony of Mr. Jaffee corroborative of Glasser's testimony regarding payments to the defendants: Mr. Jaffee's corruption is totally irrelevant and immaterial as to the defendants' conduct since he did not make any attempt to link his conduct with the four defendant. And, finally, Messrs. Grossman and Stiel in no way corroborated the specific instances of alleged payoffs testified to by Glasser, since they allegedly acted independently of each other.
- The argument that Glasser's perjury redounded to defendants' benefit is simply ludicrous. Had this jury heard evidence of Glasser's massive cash deposits and the explanation of them which the government has now offered, it is highly likely that the verdict, at least as to the counts which relied directly on Glasser's testimony, would have Defendants' claim that Glasser pocketed been different. all of the monies he received would have been viewed quite differently if the jury had heard the entire story and Glasser's "explanation" of the documentary evidence. Surely, the fact that Glasser offered an "explanation" for these deposits does not mean that a jury would have accepted that explanation as the truth. On the contrary, the combination of defendant's documentary evidence and Glasser's contrived explanation would have substantially weakened his testimony and would quite probably have led to an acquittal. It is thus submitted that whatever test the Court deems applicable, defendants have satisfied its requirements and that a new trial must be granted.

WHEREFORE, for all the above reasons, and the reasons contained in the moving papers, the motion for new trial should be granted.

ELKAN ABRAMOWITZ

Sworn to before me this 29 day of May, 1974.

LILLIE SCHECHTER

Affidavit of Patricia M. Clarkson

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK 73 Cr. 614 (LWP)

UNITED STATES OF AMERICA

-against-

GEORGE STOFSKY, CHARLES HOFF, AL GOLD and CLIFFORD LAGEOLES,

Defendants.

State of New York, County of New York, ss.:

PATRICIA M. CLARKSON, being duly sworn, deposes and says:

- 1. I am employed by the firm of Weiss Rosenthal Heller & Schwartzman as secretary to Elkan Abramowitz, Esq.
- 2. I have read the affidavit of Elkan Abramowitz, Esq., sworn to the 29th day of May, 1974, especially paragraph 8 thereof, and insofar as the aforesaid paragraph related to my actions and conversations, they are entirely truthful and correct.

PATRICIA M. CLARKSON

Sworn to before me this 29 day of May, 1974.

LILLIE SCHECHTER

Letter from The East New York Savings Bank to Mr. E. Abramowitz, dated February 19, 1974

February 19, 1974

Weiss, Rosenthal, Heller & Schwartzman 295 Madison Avenue New York, New York 10017

Attention: Mr. E. Abramowitz

Gentlemen:

Enclosed herewith please find transcripts for accounts of Betty Glasser and Jack Glasser, Re: U.S.A. vs. George Stofsky, et al.

Cordially yours, FRED H. HINCK Assistant Vice President

FHH :nc Enclosures

Transcript of Decision from the Bench Denying Motion for New Trial, May 31, 1974

The Court: All right. First I want to announce that I will shortly file a memorandum opinion denying defendants' motions for judgment of acquittal and for a new trial. What the opinion says and what it means is that on close analysis I found that the evidence was simply not of such a character as to overcome the strong policy of the law in favor of jury verdicts. Clearly as a practical matter it is not the kind of evidence which would probably produce a different verdict at a re-trial, and even under the less stringent test I found that it is not of such a nature as to lead me to conclude that the jury in this case would probably have reached a different verdict if this evidence had been presented at the trial.

Among my reasons for so finding is the presence of other evidence in the trial, evidence entirely independent of the testimony of Jack Glasser, evidence of direct payoffs to some of the defendants which corroborated Glasser's general story and would serve to make his testimony believable in any event.

Judgment (George Stofsky)

UNITED STATES DISTRICT COURT

FOR THE

SOUTHERN DISTRICT OF NEW YORK

No. 73 Cr. 614

UNITED STATES OF AMERICA

V.

GEORGE STOFSKY

On this 31st day of May, 1974 came the attorney for the government and the defendant appeared in person and by Elkan Abramowitz, Esq., counsel

IT IS ADJUDGED that the defendant upon his plea of not guilty and a verdict of guilty by a jury, has been convicted of the offense of unlawfully, wilfully and knowingly attempting to evade and defeat a large part of income tax due and owing by him and his wife to United States of America for the calendar years 1970 and 1971 (Title 26, U.S. Code, Section 7201); unlawfully, wilfully, knowingly and corruptly endeavoring to influence, obstruct and impede the due administration of justice. (Title 18, U.S. Code, Sect. 1503); unlawfully, wilfully and knowingly requesting, demanding, receiving and accepting payments and deliveries of money from employers who were engaged in an industry affecting interstate commerce and conspiracy so to do. (Title 29, U.S.

Judgment (George Stofsky)

Code, Sect. 186(b), Title 18, U.S. Code, Section 2 and Title 18, Sect. 371, U.S. Code); conducting and participating, directly and indirectly, in the conduct of an enterprise's affairs through a pattern of racketeering activity, and conspiracy so to do. (Title 18, U.S. Code, Sections 1962(c) and 1961(1)(B) and (C), and 371) as charged in counts 1 thru 5, 23, 24, 25, 26 and the court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

IT IS ADJUDGED that the defendant is guilty as charged and convicted.

IT IS ADJUDGED that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of THREE (3) YEARS on each of counts 23, 24, 25 and 26 to run concurrently with each other. ONE (1) YEAR on each of counts 3, 4 and 5 to run CONSECUTIVELY to each other, but concurrently with the terms imposed on counts 23, 24, 25 and 26. ONE (1) YEAR on each of counts 1 and 2 to run CONSECUTIVELY to each other, but concurrently with the terms imposed on counts 23, 24, 25 and In addition, defendant shall pay a fine to the United 26. States in sum of TWO THOUSAND (\$2,000) DOLLARS on each of counts 2, 3, 4 and 5; and in the sum of TWO THOUSAND-FIVE HUNDRED (\$2,500) DOLLARS on each of counts 23 and 24. Total fines of THIRTEEN THOUSAND (\$13,000) DOLLARS to be paid or defendant is to stand committed until fine is paid or he is otherwise discharged by due course of law.

Judgment (George Stofsky)

Defendant released on his own recognizance pending appeal.

A True Copy

RAYMOND F. BURGHARDT, Clerk

By (Illegible)
Deputy Clerk

IT IS ORDERED that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

L. W. PIERCE,
United States District Judge.
RAYMOND F. BURGHARDT,
Clerk.

Judgment (Charles Hoff)

UNITED STATES DISTRICT COURT

FOR THE

SOUTHERN DISTRICT OF NEW YORK

No. 73 Cr. 614

UNITED STATES OF AMERICA

٧.

CHARLES HOFF



On this 31st day of May, 1974 came the attorney for the government and the defendant appeared in person and Elkan Abramowitz, Esq., counsel

It is Adjudged that the defendant upon his plea of not guilty and a verdict of guilty by a jury, has been convicted of the offense of unlawfully, wilfully and knowingly combining, conspiring, confederating and agreeing with others to violate Title 29, U.S. Code, Sect. 186(b). (Title 18, U.S. Code, Section 371; being an officer and employee of a labor organization which represented the employees of employers who were engaged in an industry affecting interstate commerce, unlawfully, wilfully and knowingly requesting, demanding, receiving and accepting payments and deliveries of money from employers (Title 29, U.S. Code, Sect. 186(b) and 2.); unlawfully, wilfully and knowingly attempting to evade and defeat a large part of the income tax due and owing by him and his wife to United States of America, by

Judgment (Charles Hoff)

preparing and causing to be prepared, by signing and causing to be signed and mailing and causing to be mailed a false and fraudulent joint income tax return which was filed with Internal Revenue Service. (Title 26, U.S. Code, Section 7201) as charged in counts 1, 6, 7, 9, 10, 11, 12, 18, 19, 20 and 27 and the court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

IT Is ADJUDGED that the defendant is guilty as charged and convicted.

IT Is Adjudged that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of THREE (3) YEARS on count 27. ONE (1) YEAR on each of counts 6, 7 and 9 to run CONSECUTIVELY to each other, but concurrently with the term imposed on count 27. ONE (1) YEAR on each of counts 10, 11, and 12 to run CON-SECUTIVELY to each other, but concurrently with the ONE (1) YEAR on each of term imposed on count 27. counts 18, 19 and 20 to run CONSECUTIVELY to each other, but concurrently with the term imposed on count 27. ONE (1) YEAR on count 1 to run concurrently with term imposed on count 27. In addition, defendant shall pay a fine to United States in sum of TWO-THOUSAND (\$2,000) DOLLARS on count 27; and ONE-THOUSAND (\$1,000) DOLLARS on each of counts 1, 6, 7, 9, 10, 11, 12, 18, 19 and 20. Total fines of TWELVE-THOUSAND (\$12,000) DOLLARS to be paid or defendant is to stand committed until fine is paid or he otherwise discharged by due course of law.

Judgment (Charles Hoff)

Defendant released on his own recognizance pending appeal.

A True Copy

RAYMOND F. BURGHARDT, Clerk

By (Illegible)

Deputy Clerk

IT IS ORDERED that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

> L. W. PIERCE, United States District Judge. RAYMOND F. BURGHARDT, Clerk.

Judgment (Al Gold)

UNITED STATES DISTRICT COURT

FOR THE

SOUTHERN DISTRICT OF NEW YORK

No. 73 Cr. 614

UNITED STATES OF AMERICA

V.

AL GOLD

On this 31st day of May, 1974 came the attorney for the government and the defendant appeared in person and by Elkan Abramowitz, Esq., counsel

IT IS ADJUDGED that the defendant upon his plea of not guilty and a verdict of guilty by a jury, has been convicted of the offense of unlawfully, wilfully and knowingly attempting to evade and defeat a large part of income tax due and owing by him and his wife to United States of America for the calendar years 1970 and 1971 (Title 26, U.S. Code, Section 7201); unlawfully, wilfully and knowingly and corruptly endeavoring to influence, obstruct and impede the due administration of justice. (Title 18, U.S. Code, Section 1503); requesting, demanding, receiving and accepting payments and deliveries of money from employers who were engaged in an industry affecting interstate commerce and conspiracy so to do. (Title 29, U.S. Code, Section 186(b), & Title 18, U.S. Code, Sect. 2 and Title 18, U.S. Code, Sect. 377); conducting and participating, directly or indirectly, in the conduct of an enterprise's affairs through a pattern

Judgment (Al Gold)

of racketeering activity, and conspiracy so to do. (Title 18, U.S. Code, Sections 1962(c) and 1961(1)(B) and (C), and 371) as charged in counts 1 thru 5, 6, 7, 9, 10, 11, 12, 14, 15, 16, 17, 23, 24, 32, 33 and the court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

IT IS ADJUDGED that the defendant is guilty as charged and convicted.

IT IS ADJUDGED that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of TWO (2) YEARS on each of counts 23, 24, 32 and 33 to run concurrently with each other. ONE (1) YEAR on each of counts 1 and 2 to run CONSECUTIVELY to each other, but concurrently with the terms imposed on counts 23, 24, 32 and 33. ONE (1) YEAR on each of counts 3 and 4 to run CONSECUTIVELY to each other, but concurrently with the terms imposed on counts 23, 24, 32 and 33. ONE (1) YEAR on each of counts 5 and 6 to run CONSECU-TIVELY to each other; but concurrently with the terms imposed on counts 23, 24, 32 and 33. ONE (1) YEAR on each of counts 7 and 9 to run CONSECUTIVELY to each other, but concurrently with the terms imposed on counts 23, 24, 32 and 33. ONE (1) YEAR on each of counts 10 and 11 to run CONSECUTIVELY to each other, but concurrently with the terms imposed on counts 23, 24, 32 and 33. ONE (1) YEAR on each of counts 12 and 14 to run CONSECUTIVELY to each other, but concurrently with terms imposed on counts 23, 24, 32 and 33. ONE (1) YEAR on each of counts 15 and 16 to run CONSECUTIVELY to each other, but concurrently with the terms imposed on counts 23, 24, 32 and 33. ONE (1) YEAR on count 17, said term to run concurrently with the terms imposed on

Judgment (Al Gold)

counts 23, 24, 32 and 33. In addition, defendant shall pay a fine to the United States in sum of TWO-THOUSAND (\$2,000) DOLLARS on each of counts 2, 3, 4, 5, and 23. Total fines of TEN THOUSAND (\$10,000) DOLLARS to be paid or defendant is to stand committed until fine is paid or he is otherwise discharged by due course of law. Defendant released on his own recognizance pending appeal.

It is Ordered that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

A True Copy

RAYMOND F. BURGHARDT, Clerk

By (Illegible)

Deputy Clerk

L. W. PIERCE,
United States District Judge.
RAYMOND F. BURGHARDT,
Clerk.

Judgment (Clifford Lageoles)

UNITED STATES DISTRICT COURT

FOR THE

SOUTHERN DISTRICT OF NEW YORK

No. 73 Cr. 614

UNITED STATES OF AMERICA

V.

CLIFFORD LAGEOLES

On this 31st day of May, 1974, came the attorney for the government and the defendant appeared in person, and by Elkin Abramowitz, Esq., counsel

IT IS ADJUDGED that the defendant upon his plea of not guilty and a verdict of guilty by a jury, has been convicted of the offense of unlawfully, wilfully and knowingly combining, conspiring, confederating and agreeing with others to violate Title 29, U.S. Code, Sect. 186(b). (Title 18, U.S. Code, Section 371); being an officer and employee of a labor organization, which represented the employees of employers who were engaged in an industry affecting interstate commerce, unlawfully, wilfully and knowingly requesting, demanding, receiving and accepting payments and deliveries of money from employers (Title 29, U.S. Code, Sect. 186(b) and 2.) as charged in counts 1, 6, 7, 9, 10, 11 and 12 and the court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the court,

IT IS ADJUDGED that the defendant is guilty as charged and convicted.

IT IS ADJUDGED that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of ONE (1) YEAR on each of counts 1 and 6 to run CONSECUTIVELY

Judgment (Clifford Lageoles)

to each other. ONE (1) YEAR on each of counts 7 and 9, said terms to run CONSECUTIVELY to each other, but concurrently with the terms imposed on counts 1 and 6. ONE (1) YEAR on each of counts 10 and 11 to run CON-SECUTIVELY to each other, but concurrently with the terms imposed on counts 1 and 6. ONE (1) YEAR on count 12, said term to run concurrently with the terms imposed on counts 1 and 6. Execution of prison sentence is hereby suspended and the defendant is placed on probation for a period of TWO (2) YEARS, subject to the standing probation order of this court. In addition, defendant shall pay a fine to the United States in sum of FIVE-HUNDRED (\$500) DOLLARS on count 1; and in the sum of TWO HUNDRED-FIFTY (\$250) DOLLARS on each of counts 6, 7, 9, 10, 11 and 12. Total fines of TWO-THOU-SAND (\$2,000) DOLLARS to be paid or defendant is to stand committed until fine is paid or he is otherwise discharged by due course of law. Period of probation is to begin immediately. Fines are stayed pending appeal.

IT IS FURTHER ORDERED that during the period of probation the defendant shall conduct himself as a law-abiding, industrious citizen and observe such conditions of probation as the Court may prescribe. Otherwise the defendant may be brought before the court for a violation of the court's orders.

IT IS FURTHER ORDERED that the Clerk deliver three certified copies of this judgment and order to the probation officer of this court, one of which shall be delivered to the defendant by the probation officer.

A True Copy

RAYMOND F. BURGHARDT, Clerk

By (Illegible)
Deputy Clerk
L. W. PIERCE,
United States District Judge.
RAYMOND F. BURGHARDT,

Clerk.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

73 Cr. 614

UNITED STATES OF AMERICA

_v.-

GEORGE STOFSKY, et al.,

Defendants.

APPEARANCES:

WEISS, ROSENTHAL, HELLER & SCHWARTZMAN 295 Madison Avenue New York, New York 10017 By: Elkan Abramowitz, Esq.

and

PAUL K. ROONEY, ESQ. 521 Fifth Avenue New York, New York 10017 Attorneys for Union Defendants

PAUL J. CURRAN, ESQ.
United States Attorney
United States Courthouse
Foley Square
New York, New York 10007

By: JOHN SABETT!

Assistant United States Attorney
Attorney for United States of America

LAWRENCE W. PIERCE, D.J.

MEMORANDUM OPINION

After a two and one-half week trial ending February 28, 1974, defendants Stofsky, Hoff, Gold and Lageoles, officials of the Furriers' Joint Council, a labor union, were convicted by a jury of accepting payoffs from fur manufacturers and of other federal crimes related to the pay-off scheme. They have moved for a new trial pursuant to Fed. R. Crim. P. 33, citing newly discovered evidence concerning the personal finances of one of the government's chief witnesses, which directly controverts the witness' testimony at trial with respect to the source of his small fortune. Defendants assert two theories in support of the motion: first, that the new evidence conclusively establishes that the convictions were based on perjured testimony, mandating a new trial; and, second, that the government had a duty to discover the true state of the witness' finances and to disclose it, and that its failure to do so requires a new trial. For the reason set forth below, the motion is denied.

Background

The jury trial commenced on February 11, 1974. The indictment charged that the defendants accepted a continuing flow of pay-offs during 1967 through 1970 from certain fur manufacturers in return for permission to circumvent terms of the union contract prohibiting overtime and subcontracting. The government presented three witnesses who testified as to the pay-offs. Two were manufacturers who said they made payment directly to Stefsky and Gold. The third was Jack Glasser, a former labor adjuster for the trade association which represented the manufacturers who were parties to the contract with the union. Glasser's testimony, given under the umbrella of

transactional immunity, was that he served as an intermediary, negotiating the amount and frequency of the payments, collecting the money from the manufacturers involved, and delivering the cash payments to various of the four defendants, keeping a share for himself. He testified that altogether the scheme involved a total of around \$16,000, of which he kept about \$5,000. He also testified that he never banked his share, but simply spent it as he received it.

There was testimony at the trial with respect to the fur garment industry in New York City which tended to provide a circumstantial background in support of Glasser's story. The jury heard that the industry is relatively small and contained geographically; that its labor requirements are seasonal; that the union's contract protects workers by requiring extensive benefits from the manufacturers, and by forbidding manufacturers to meet their excess labor needs with overtime or subcontracts to non-union shops. The defendants introduced some evidence to the contrary, but the jury could have reasonably concluded that the contract created a hardship for some manufacturers who sought ways to circumvent it. From that premise the jury could have reasonably inferred that if the manufacturers would pay-off anyone for protection against union enforcement, it would be union officials charged with enforcement.

Both in the trial at issue here, and in proceedings involving a related indictment against manufacturers charged with making the pay-offs, 73 Cr. 616, there was ample corroboration of Glasser's testimony that the manufacturers did violate the contract and that they paid the money to Glasser for that privilege with the assumption that it was going to union officials. This critical assumption was circumstantially supported by evidence that these particular manufacturers suffered little union couble during the period when they were breaking the contract and making

the pay-offs. But, aside from the circumstantial evidence as to the nature of the industry and the payees' lack of union problems, Glasser's testimony with respect to his subsequent payments to these defendant union officials was virtually uncorroborated. In fact, Glasser testified that no payment was ever witnessed. He said he merely carried the cash around until he encountered the designated official to whom he would palm the payment, whispering the name of the manufacturer involved.

Altogether, in the trial of the union officials, seventeen substantive counts involving payments to these defendants went to the jury. Six counts involved payments unrelated to Glasser and were supported by the testimony of two manufacturers who made direct payments to two of the four defendants. Ten counts rested entirely on Glasser's testimony. One count was partially supported by the testimony of the manufacturer involved who said that he paid Glasser, but did not have actual knowledge of Glasser's payment to the intended union official. Likewise, the three manufacturers who pleaded guilty to Indictment 73 Cr. 616, disavowed any actual knowledge of Glasser's subsequent transmission of their payment to union officials.

And therein lies the crux of both the theory of defense adopted by the four union officials at trial and of their motion for a new trial.

The defense attempted to develop at trial that although Glasser might have taken the payments from the manufacturers, and even had led them to believe he was using the cash to pay-off union officials on their behalf, he was in fact pocketing all of the money given to him by the manufacturers. The theory held that Glasser's scheme was viable because the union had a small enforcement staff incapable of catching more than a handful of contract violations under any circumstances. Thus, the defendants posited, Glasser "conned" the manufacturers into believing

that pay-offs were necessary to fend off the union, and counted on the inability of the union to police the contract to give his scheme the appearance of continuing credibility.

Glasser was motivated to lie about the payments to union officials, defendants asserted, by his desire to avoid federal prosecution and his bitterness over loss of his pension benefits when he was terminated by the trade association for whom he worked.

Apparently in pursuit of these lines of defense, just prior to the opening of the trial, defendants subpoenaed Glasser's federal income tax returns for the years 1967 Glasser claimed all had been destroyed through 1972. except his 1972 return which he produced. It revealed a large interest income, the bulk from the East New York During cross-examination on February Savings Bank. 13, 1974, defense counsel, using the 1972 return, elicited testimony from Glasser that his personal wealth totalled some \$120,000. On further questioning he said the money was chiefly from his wife's inheritance of many years ago. On that same date, defendants subpoenaed the East New York Savings Bank's records of the Glassers' account, and moved orally for production of the remaining returns. The Court requested an offer of proof.

On February 15, 1974, following a showing which focused more on impeaching possibilities than on substantive matters, this Court granted defendants' demand for production of the remaining original returns from the IRS files. With the cooperation of the government and Glasser, the order was expedited and the returns produced on February 20, 1974. The East New York Savings Bank records were produced at the latest on February 21, 1974, and revealed that the Glassers had deposited \$38,000 in savings accounts there during the years 1967 through 1970, the

period of the pay-off scheme.

Defendants commenced presentation of their case on February 21, 1974. They rested on February 26, 1974, without recalling Glasser, without a request for a continuance and with little if any reference to Glasser's bank accounts or income tax returns. They did produce probate records which suggested that Mrs. Glasser's inheritance was not anywhere near the size of the \$120,000 nest-egg about which Glasser had testified. On summation, defense counsel vigorously attacked Glasser's credibility, using among other items, the probate records and the revelations from the 1972 tax returns. He fully set forth the defense theory. As noted above, after due deliberation the jury convicted on all counts submitted to it.

The New Evidence

On April 22, 1974, having requested an adjournment of sentence for post-trial preparation, defendants filed this motion. It asserts that since March 7, 1974, when they first received the actual deposit slips from the East New York Savings Bank, the defendants have discovered that during 1967 through 1970, the Glassers deposited some \$57,000 in a series of frequent cash transactions in three separate New York banks: the previously noted \$38,000 in the East New York Savings Bank; \$12,500 in the Greenwich Savings Bank; and \$7,300 in the Emigrant Savings Bank.

On May 24, 1974, the government having requested an adjournment of sentence in order to prepare a response, filed extensive papers in opposition to the motion. The government's affidavit states that the Assistant United States Attorney responsible for the prosecution interviewed Jack Glasser and his wife on May 3, 6, 13, and 14, 1974. During the course of these interviews the Glassers revealed to the government for the first time that they had received cash

funds from a variety of sources during the period of time in question. These sources included, according to Glasser, his share of illegal payments to union officials far beyond the scope of the scheme Glasser had previously described to

the government or to the jury.

Glasser stated that his share of these additional payments was around \$7,000 for each of the years in question. The rest of the \$57,000 was explained by the sale of jewelry; Christmas gifts from manufacturers; wholesale commissions; vacation gifts from manufacturers overtime committee payments; and miscellaneous commissions. Other errors in trial testimony by both Glasser and his wife were attributed to failure to understand the questions put by counsel.

In addition to the affidavit just described, the government has also filed an in camera submission consisting of a government file memorandum on the discussions with It differs, in the main, from the public the Glassers. affidavit in its detail with respect to the additional illegal pay-offs, setting forth names, dates and circumstances involved in each, as related by Glasser. The government has requested that such document be sealed and made a part of the record in this case, asserting that disclosure at this juncture would seriously compromise future government investigations. In the Court's view this is a wellfounded request and the document has been sealed by Order of the Court dated June 6, 1974. However, it is appropriate at this time to disclose to defense counsel that the sealed affidavit reveals that Glasser now says he originally told the government only of payments from manufacturers to union officials which he had reason to believe the government already knew about; and that at the recent interviews, he and his wife initially told the government that the cash deposits could be explained, in total, by These additional facts as they bear on jewelry sales. Glasser's credibility have been taken into account here.

Thus, since trial, the following evidence has been developed:

- 1. Glasser made a series of cash deposits totalling more than \$57,000 during the period of the pay-off scheme. This directly contradicts his trial testimony that most of his \$120,000 fortune came from his wife's inheritance some years ago.
- 2. Glasser has explained the source of the \$57,000, by stating that at least \$20,000 of its represents his share of even more pay-offs during the critical period. This directly contradicts his trial testimony that the scheme totalled \$16,000 and his share totalled \$5,000, and that he never banked any of it. But in the process it further implicates the defendants in the scheme for which they have been convicted.

The government does not contest the veracity of the defendants' documentary evidence, and concedes that Glasser's testimony about these matters was false in many respects.

The Court concludes that a government witness has engaged in an effort to conceal information, and has given false, or deliberately misleading testimony with respect to

the source of his savings.

But, new evidence revealing that a witness has testified falsely as to some matters, standing alone, is not enough to mandate a new trial. Before this Court can proceed to the merits, the defendants must show that "the material asserted to be newly discovered is in fact such and could not with due diligence have been discovered [by them] before or, at the latest, at trial." United States v. Costello, 255 F.2d 876, 879 (2d Cir.), cert. denied, 357 U.S. 937 (1958). Then, the ultimate result depends upon analysis

of the new evidence and the false testimony, and the materiality of both. The standard of materiality required, in turn, depends upon the degree to which the government can be said to have been involved in the suppression, if any, of the evidence or responsible for the false testimony.

Due Diligence of Defendants

In retrospect, it would appear that the key to the "new" facts was in defense counsel's hands from the moment Glasser was cross-examined about his 1972 tax return early in the trial, or at the latest when counsel finally viewed the transcript of the East New York Savings Bank accounts on February 21, 1974, and saw that \$38,000 (almost a third of what Glasser had earlier told him represented the total Glasser fortune) had been deposited in frequent transactions from 1967 through 1970. While at that time counsel did not know that the deposits were cash, it was still strong evidence that Glasser was not telling the truth with respect to the inheritance. But, this Court is not prepared to say that trial counsel in a complex, demanding case is bound to turn every key at precisely the right moment in order to meet the requirements for a new trial motion. Cf. United States v. Keogh, 391 F.2d 138, 147 (2d Cir. 1968). Nor does this Court believe that counsel's inadvertence was deliberate trial strategy as the government suggests. It is conceivable, of course, that counsel veered away from further direct inquiry with respect to Glasser's wealth, fearful of eliciting before the jury the damaging explanation which Glasser has now given. But, if that were the case, the probate records which counsel did introduce on the same issue presented somewhat the same risk.

In any event, the issue of due diligence is close enough, and the matter of Glasser's performance serious enough, that a resolution on the merits appears to be appropriate and necessary.

The Government's Duty

There are a multitude of standards current in the law for testing the merits of a new trial motion. They range from the very liberal, where a defendant need show only that with the new evidence, or without the falsehoods, the jury in the case already tried "might not have convicted"; to the very strict, where the defendant must show that with the new evidence, or without the falsehoods, a jury on a retrial would "probably reach a different verdict." In large part, the standard to be applied depends upon whether the defendant can show that the government is somehow responsible for false testimony, or that it negligently failed to disclose evidence, or that it deliberately suppressed evidence.

The defendants here do not contend that the government instigated Glasser's false testimony, or that the government knew Glasser's testimony to be false. They do not argue that the government possessed the cash deposit slips and deliberately, or negligently suppressed them. Instead, they assert that the government possessed Glasser's federal tax returns, and that under the circumstances the prosecutor should have recognized their high value to the defense and turned them over to the defendants pursuant to the principles of Brady v. Maryland, 373 U.S. 83 (1963). More generally, characterizing the state of Glasser's finances as a central issue in the case, defendants urge that the government had an obligation to conduct a pre-trial investigation of Glasser's veracity with respect to these matters irrespective of what it possessed or did not pos-For the latter proposition, the defendants invoke Brady but cite only People v. Maynard (Sup. Ct. N.Y. Cty.), N.Y.L.J., Vol. 171, No. 64, p. 18, col. 7, April 3, 1974.

That Glasser's financial position and thus his underlying records could be seen as relevant to this case is not a wholly frivolous proposition. The state of a key witness' finances was said to be something "the prosecutors properly required... to be investigated" in *United States* v. Keogh,

supra, 391 F.2d at 142, in a case involving precisely the same theory of defense as defendants have asserted here. But neither this dictum in Keogh, or Brady, or any other authoritative case cited by defendants requires such an investigation. The requirement is that the prosecution must disclose exculpatory information in its possession. It is from possession, however buried, forgotten or overlooked, that the prosecution's obligation arises.

The defendants say that the "government" possessed Glasser's tax returns. They offer no support for that assertion, and it would appear that what they mean is that the "government at large" possessed the returns on file with the Internal Revenue Service. Given the strong public policy with respect to secrecy of federal income tax returns, this Court declines to hold that the tax returns are in the constructive possession of the prosecutor merely because they are on file with the IRS.

Furthermore, even if the government had possessed Glasser's tax returns, it is not at all certain that the value to the defendants of these documents would have flagged the prosecutor's attention sufficiently to require him to turn them over. Of course, it is easy now to point out that he would have seen the size of Glasser's interest income, and surmised the size of Glasser's small fortune. In hindsight, mainly because Glasser lied about the source of the savings on the stand, this information is perceived as of some value to the defendants. But, its practical materiality is still highly questionable and in this Court's view it is not of such a nature as to have mandated pretrial disclosure. The Court is not persuaded by the government's argument that it would violate public policy to provide such information to the defendants, under any circumstances. If the returns had been possessed, and if the portion with respect to savings interest had alerted the prosecutor, the returns themselves need not have been turned over in order

to have provided the information. Further, it should be noted that tax returns are not entirely sacrosanct, once a proper showing has been made to a Court, as demonstrated by this Court's order to produce them during trial. In that light, it is perhaps noteworthy that defendants' trial demand contained the first showing in this proceeding of the importance of this issue to the defense. Their proforma discovery motion for Glasser's "bank statements, bank books, diaries, notes, memoranda, and other relevant documents . . ." (Defs' Motion for Discovery, ¶8 July 18, 1973) did not include tax returns, and was denied by the Court as entirely unsupported.

The Standard

Having found no prosecutorial misconduct, this Court is of the view that the applicable test is the formulation set forth in *United States* v. *DeSapio*, 435 F.2d 272, 286 (2d Cir. 1970), cert. denied, 402 U.S. 999 (1971), and reiterated in a line of cases, including *United States* v. *DeSapio*, 456 F.2d 644, 647 (2d Cir.), cert. denied, 406 U.S. 933 (1972): Is the evidence of such a nature that it would "probably produce a different verdict in the event of a retrial."

But, the government has suggested a test more liberal to the defendants, as set forth in *United States* v. *Marquez*. 363 F. Supp. 802, 806 (S.D.N.Y. 1973), aff'd without opinion, 489 F.2d 753 (2d Cir. 1974), to wit: Would the new evidence, or the lack of the perjured testimony "have produced a different verdict [at the completed trial]." Inasmuch as the result is the same under either test, the Court will apply both.

Discussion

The new evidence produced by the defendants demonstrates that Glasser lied about the source of his savings,

and it affirmatively shows that a portion of those savings has been recently deposited in cash.

The defendants do not seriously argue that it is this false testimony, or that it is the failure to state this "truth" about the cash deposits, which convicted the defendants. Standing alone, these matters are collateral to the elements of the offenses charged against these defendants. Instead, they seek to elevate the collateral to a level of materiality by asserting that "the source of these cash deposits could be explained only by concluding that Glasser perjured himself when he testified that he gave any of the monies to one or more of the defendants." Thus, they contend that the new evidence establishes that Glaser lied about what is, without doubt, the most material portion of his testimony. The new evidence establishes no such proposition. not directly address Glasser's testimony with respect to payments to the defendants, nor does it lead inevitably to the conclusion that Glasser lied about the pay-offs to the defendants. It is far too wide a leap in reason to assert that just because Glasser accumulated \$57,000 in cash during the critical time period that, a fortiori, a jury hearing these facts could only conclude that he kept the whole of the mere \$11,000 he said he gave the defendants. On the contrary, the figures alone are so incongruous as to lead to no conclusion at all.

The defendants themselves, in other portions of their papers, state the wholely sensible premise that this new evidence "would indicate to a jury that there were much larger payments and/or payments from many additional sources." Even without Glasser's subsequent explanation, these two inferences of other or larger payments, or both, could have occurred to the jury, and would not have necessarily or "probably" produced a different verdict. Applying the stricter test of probable effect at a new trial, it is likely as the matter has evolved to the present, complete with

Glasser's explanation inculpating the defendants, that no defense counsel would actually attempt to use the evidence of the cash deposits as substantive support for the defendants' theory. The risk inherent in exposing the jury to Glasser's damaging explanation would be great.

The defendants also suggest that this evidence can be viewed as capable of destroying the credibility of Glasser solely because it shows him to have lied about the source of his funds. Under the strict test, it is still doubtful that it would produce a different verdict on a retrial. Glasser would not obligingly repeat his earlier false testimony just to provide defense counsel with the opportunity to impeach him with this new evidence. The government could not permit it in any event. It is possible, of course, that counsel could attempt to exploit this entire episode so as to seriously damage Glasser's credibility, but, again, it is difficult to imagine how it might be done without raising the spectre of a far wider, broader scheme involving these defendants.

Under all of the circumstances, the strongest argument the defendants advance is the probable impeaching effect of the new evidence, if it had been produced at precisely the right moment at the trial just concluded. That "right" moment could only have been after Glasser had testified falsely on the subject. Then, the question is, would proof that he had lied about his savings have dealt a blow to his credibility so serious as to have probably led the jury to totally discard his testimony with respect to payments to the union officials?

Assessment of a jury's view of credibility is speculative at best. But several factors lead this Court to conclude that this evidence would not have destroyed Glasser to the extent that the verdict of the jury would have been different. As it was, the jury had evidence from the probate records which established that the inheritance story was not true. And although that evidence did not supply the

jury with an explanation of where the money did come from, it must have demonstrated that Glasser had not told the truth about the source of the \$120,000. There is no doubt that evidence of the recent cash deposits would have had a dramatic impact. But, in this Court's view, it would not have changed the quantum of the impeaching effect.

In addition, the jury had totally independent evidence to support Glasser's story which would have remained unsullied. Two manufacturers had testified as to direct payments made to some of these defendants. One manufacturer had testified that he gave money to Glasser with the understanding that it was going to union officials. A nondefendant ex-union official had testified that he accepted money from Glasser under similar circumstances. the jury heard evidence of the small and tightly circumscribed for industry from which they might well have reasoned that the story Glasser told made sense, however untruthful he had been about the source of his fortune. Further, the jury could have reasoned from the same industry evidence that the basic flaw in the defense theory was that if Glasser knew the union lacked the manpower to enforce the contract, then all of the manufacturers must Put another way, it was reasonable for have also known. the jury to conclude that the manufacturers would not have continued to pay Glasser during a period of at least three years, unless they knew that it was necessary to payoff union officials in order to circumvent the contract, and they were convinced that he was, in fact, so doing with their money.

Given all of these factors, this Court cannot conclude that if the jury in the trial just completed had known of this new evidence of cash deposits, or the fact that Glasser lied about the source of his savings, it would probably have reached a different verdict, an acquittal; or that this

new evidence would probably produce an acquittal on retrial.

The motion for a new trial is hereby denied. The defendants' accompanying motion for a judgment of acquittal pursuant to Fed.R.Crim.P. 29(c), is hereby denied.

SO ORDERED.

Dated: New York, New York June 12, 1974

LAWRENCE W. PIERCE U.S.D.J.

FOOTNOTES

1. This liberal test is a modification of the classic test set forth in Larrison v. United States, 24 F.2d 82, 87 (7th Cir. 1928), which involves a post-trial revelation that a conviction was based on false testimony. See United States v. Polisi, 416 F.2d 573, 577 (2d Cir. 1969). This test has apparently been limited to cases involving prosecutorial misconduct in this Circuit. United States v. DeSapio, 435 F.2d 272, 286 n. 14 (2d Cir. 1970), cert. denicd, 402 U.S. 999 (1971). It is also a variation of the applicable test for negligent nondisclosure of evidence which was in the government's possession, as set forth in United States v. Houle, 490 F.2d 167, 170 (2d Cir. 1973), which requires an assessment of "... whether ... there was a significant chance that this added item, developed by skilled counsel . . . could have induced a reasonable doubt in the minds of enough jurors to avoid a conviction."

- 2. The strict standard is reserved for motions which can be viewed simply as based on newly discovered evidence and free from prosecutorial misconduct. See, e.g., United States v. DeSapio, supra; United States v. DeSapio, 456 F.2d 644, 647 (2d Cir.), cert. denied, 406 U.S. 933 (1972).
- 3. Where the reliability of a given witness might well be determinative of guilt or innocence, and where the government had in its possession information which demonstrated that the witness had not told the truth on the stand, and did not turn it over to defendant pursuant to Brady v. Maryland, 373 U.S. 83 (1963), the Supreme Court has said that "[a] new trial is required if 'the false testimony could . . . in any reasonable likelihood have affected the judgment of the jury . . . " Giglio v. United States, 405 U.S. 150, 154 (1972), citing, Napue v. Illinois, 360 U.S. 264, 271 (1959). Or put another way, as it has been by the Second Circuit in United States v. Mele, 462 F.2d 918, 924 (2d Cir. 1972), the standard under Giglio is "whether the evidence is material and could in any reasonable likelihood have led to a different result on retrial."
 - 4. Actually, the government has suggested that ". . . the defendant must establish that the testimony was of such a character that it probably would have produced a different conclusion" (emphasis added). Gov'n Memo in Opposition to Motion for a New Trial, p. 14. Presumably, the government means a "different conclusion" at the trial just completed.

Although the present state of law is not a model of clarity, the government's proposal strikes this

Court as more liberal than required, for two reasons. First, the oft-cited footnote in *United States* v. *De-Sapio*, 435 F.2d at 286 n. 14, seems to indicate that unless there has been prosecutorial misconduct shown, the analysis need not look to the probable effect of the new evidence had it been available in the past trial, but only to whether it would probably affect the result at a new trial. This is important in this case because Glasser's present explanation renders the new evidence worthless, as a practical matter, at any retrial. The new evidence could have been used with maximum impact only at the past trial.

Second, the government has said that the new evidence need lead only to a different "conclusion" not a "different verdict." Both DeSapio and Marquez require only the latter. In a close case, the difference between "conclusion" or "result" and "verdict" is critical. For instance, in this case it is extremely doubtful that the new evidence would precipitate a "different verdict," that is, an acquittal, in a retrial or the trial just past. But, it is quite possible that it might have swayed at least one juror in the past trial, and thus resulted in a mistrial. That would have been a "different conclusion" as this Court interprets the word.

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